

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 213 OF 2022

PROSPER MICHAEL 1ST APPLICANT

ROAD STAR TANZANIA LIMITED 2ND APPLICANT

VERSUS

ALLY SAID KATENGI (As Administrator

of Estate of the late SUNDAY SAID MATENGWA) 1ST RESPONDENT

HAMIS KAPANGAWAZI OMARY 2ND RESPONDENT

UKWATE HASSAN 3RD RESPONDENT

***(Arising from the judgment and decree of the Resident Magistrate's
Court of Dar es Salaam at Kisutu Civil Case No. 220 of 2017)***

RULING

1st and 1st August, 2022

KISANYA, J.:

The above named applicants have filed an application for extension of time within which to file an appeal against the judgment and decree of the Resident Magistrate's Court of Dar es Salaam at Kisutu dated 22nd March, 2022 in Civil Case No. 220 of 2017. Their application is preferred under section 14(1) of the Law of Limitation Act [Cap. 89, R.E. 2019]. It is supported by an affidavit sworn by the applicants' advocate one, Abrogast Honorat Meero.

Appended to the affidavit are three letters in which the applicants' counsel requested for certified copies of judgment, drawn order and

proceedings. In terms of the record, the last reminder letter was written by the applicant and received at the office the Resident Magistrate In-Charge on 6th May, 2022. Another document appended to the supporting affidavit is the copy of impugned judgment which was certified on 13th May, 2022.

When this application was called on for hearing today, the applicants were represented by Mr. Abrogast Meero, learned advocate, whereas the respondents defaulted to appear. This Court was satisfied that the respondents were duly served.

After a short dialogue with the Court, Mr. Meero conceded that the time within which to lodge the appeal had not lapsed on the account the copy of judgment was certified on 13th May, 2022 and supplied to the parties on 16th May, 2022. In that regard, the counsel for the applicants prayed to withdraw the application.

I have considered that pursuant to item 1, Part II of the Schedule to the Law of Limitation (supra), the time within which to appeal against the impugned decision is ninety (90) days. I have further considered that, in terms of Order XXXIX, Rule 1 of the Civil Procedure Code [Cap.33, R.E. 2019], the copies of impugned judgment and decree are required to be appended to the memorandum of appeal. That being the case, the requisite to obtain the copies of the judgment and decree are excluded in computing the time limitation as

provided for under section 19 of the Law of Limitation Act. [See also the case of **Methusela Enoka vs National Microfinance Bank Ltd**, Civil Appeal No. 265 of 2018, CAT at Mwanza (unreported))

Considering that the applicant requested for the copies of proceedings, judgment and decree and as the copy of judgment was certified on 13th May, 2022, I agree with the learned counsel for the applicants that the time within which to appeal has not lapsed. I am also live to provisions of section 14 of the Law of Limitation Act (supra) that an application for extension of time can be made before the expiry of the period of limitation prescribed for appeal. Now that the applicant has prayed to withdraw this application, I have no option than to grant the same.

Consequently, this application is hereby marked withdrawn with no order as to costs. The applicants may wish to file their appeal in accordance with the law.

DATED at DAR ES SALAAM this 1st day of August, 2022.



S.E. Kisanya
JUDGE