

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 547 OF 2019

(Arising from the decision of the High Court (Hon. Ngwala J) in Civil Appeal No. 69 of 2018;

Original Civil Case No 2 of 2017 of the District Court of Mkuranga at Mkuranga)

BETWEEN

ASHA A. MAWILU.....APPELLANT

Versus

MWAJUMA NASSORO OMAR.....RESPONDENT

RULING

MRUMA J,

The Applicant herein is Asha Ally Mawilu, whereas the Respondent is Mwavuma Nassoro Omari. By an application presented for filing on 9th October 2019 by way of Chamber Summons, the applicant seeks for:

- (1)** That this court be pleased to find that there exist sufficient reasons for the Applicant to lodge the Notice of Appeal out of time;

- (2) That after so finding, it be pleased to grant the said extension;
- (3) Costs of this application to follow result of this application;
- (4) Any other reliefs that this honourable court may deem fit and just to grant.

That application is supported by 7 grounds deponed in the face of the supporting affidavit among them materially that she acted promptly to apply for copies of judgment and proceedings for purposes of appeal hardly two days after the impugned judgment was delivered, that at the time she filed this application (it was presented for filing on 9th October, 2019), that the intended appeal raises serious points of law worth determination by the Court of Appeal and that the delay in filing the appeal was inadvertent and excusable due to the fact that the Applicant was pursuing similar case, i.e. Civil Case No. 6 of 2019 instituted by the Respondent.

The supporting affidavit is sworn by the Applicant wherein she reiterates the grounds stated hereinabove emphasizing that the delay was caused by the court which delayed in supplying her copies of the documents required for appeal.

Opposing the application, the Respondent Mwajuma Nassoro omari filed 7 grounds counter affidavit in opposition dated 23rd April 2020 contending in summary that the applicant has not given any good or sufficient cause for the delay in filing the appeal within the time provided under the law. That the application is an afterthought; that no serious point of law was established and that it is and a delaying tactics deployed by the Applicant to deny the Respondent to enjoy her substantial right.

The application was argued by way of written submissions. Parties were not represented thus each party filed a submission own her on behalf.

The submission by the Applicant mirror the grounds and affidavit in support of the application as reproduced above and therefore it is pointless to rewrite them here. The Applicant emphasized that the delay in filing the appeal was not inordinate and that it was occasioned by the technical hitches of the court in that despite of lodging his request to be supplied with copies of requisite documents for purposes of filing an appeal within two days she was not supplied with the same in time. She submitted further that immediately after the decision of this court the Respondent went to Ilala District Court and re-instituted the same case at that court

and it was registered as Civil Case No. 6 of 2019. The District court dismissed that case for want of jurisdictions on 30th May, 2019. The Applicant urged this court to exercise discretion and grant the Applicant's application to file the appeal out of time in order to accord the applicant an opportunity to be heard on appeal. He relied on the decision of this court (Ismail J) in case of **Dina Anyango Versus Babuu Garende Samson, HC** rendered at Mwanza Registry and **Amani Girls Home V. Isack Charles Kanela (CAT) unreported** explaining delays that arise as a result of pursuit by the Applicant of a matter which turns out to be defective or untenable are excusable delays and they constitute sufficient cause for enlargement (i.e. extension) of time for filing an appeal out of time.

On her intention to appeal immediately after the judgment, the Applicant relied on the decision of this court (Makaramba J), in the case of **Dhow Mercantile (EA) Limited Versus Commercial Case No. 147 of 2002** (Unreported) where it was held that evidence of a letter addressed to the Registrar requesting for a duly signed decree for appeal purposes is sufficient proof that the Applicant had shown good cause for delay.

Opposing the application, the Respondent entirely relied on her grounds of opposition which are reproduced hereinabove and insisting that no sufficient reasons had been advanced to explain the delay in filing of the appeal. She maintained that Rule 83 of the Court of Appeal Rules is clear that it is not necessary for a copy of judgment or decision to accompany the appeal.

The Respondent further argued that the application is made in bad faith and is an afterthought as the District Court Civil Case No 6 of 2019 was instituted long time after expiry of the period of limitation of 30 days prescribed by the law.

I have considered the application by the applicant, the grounds, supporting affidavit, grounds of opposition and written submissions for and against the application as supported by cited authorities. In my view, the main issue for determination is whether the application has any merit and therefore whether the orders sought should be granted.

According to the applicant, she indicated an intention of appealing against the judgment of this court two days after it was handed down by applying for copies of judgment and decree but that notwithstanding she

didn't get the required documents to enable her to process her appeal to the Court of Appeal.

Under Rule 45 of the Court of Appeal Rules, time for filing an appeal from judgment of the High Court to the Court of Appeal is 30 days. In this case, the judgment sought to be challenged was rendered on 29. 9. 2018. It follows that any appeal challenging that decision ought to have been filed on or before 28.10.2018. The Applicant didn't do that and has come before this court seeking to have the time extended and the appeal be filed out of time.

The Respondent viciously opposes the application stating that the same is abuse and misuse of judicial process and an afterthought. Further, that besides mere allegation of a technical hitch hindering the filing of the appeal in time, no has been exhibited.

There is a duty imposed on courts to ensure that the factors considered are consonant with the overriding objective of civil proceedings litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the court. The reason given for the delay hence this application is that the court didn't supply the Applicant with required documents in time. The Respondent didn't dispute this fact. It

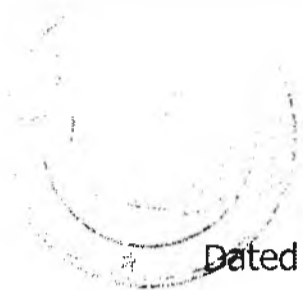
must be realized that courts exist for the purpose of dispensing justice, thus judicial decisions of courts must reflect the best interest of the people whom the law is intended to serve. It is incumbent upon the court in exercising its judicial authority to ensure dispensation of justice. A court of law should be hesitant at closing the door to the corridors of justice prior to a litigant being heard on his complaint. So far the applicant did not have a chance to file her appeal despite showing interest to do at the earliest possible time. She applied for copies of Judgment and decree. In her letter to the Registrar she stated clearly that she was aggrieved by the decision of this court and was intending to appeal to the Court of Appeal to challenge an order condemning her to pay costs. To me that alone was a notice of appeal. The undisputed fact that she was not supplied with what she had requested in time constitutes sufficient cause of delay.

Accordingly, I find and hold that the Applicant has demonstrated sufficient cause of delay to warrant being granted an extension of time within which she can lodge her notice of appeal.

In the end, I find the application by the applicant herein meritorious. I grant the prayers sought and order as follows:

1. The Applicant should lodge her notice of appeal within 14 days from the date of this order.
2. As the Respondent has no take in the protruded litigations each party shall bear own costs.

Order accordingly,



A handwritten signature in black ink, appearing to read 'A. R. Mruma', is written above the printed name.

A. R. Mruma

Judge

Dated at Dar Es Salaam, this 9th Day of March 2022.