

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**MISC. CIVIL APPLICATION NO. 8 OF 2022**

*(Arising from Probate Appeal No. 01 of 2021; In the District Court of  
Morogoro, at Morogoro)*

**GETRUDA MGUGE MTIGA.....APPLICANT**

**VERSUS**

**CHIKU KHALID CHONDA..... RESPONDENT**

**R U L I N G**

14<sup>th</sup> June & 19<sup>th</sup> August, 2022

**CHABA, J.**

This is an application for enlargement of time within which to file an appeal out of time against the proceedings, judgment and decree in Probate Appeal No. 1 of 2021 in the District Court of Morogoro, at Morogoro between the respondent and applicant delivered on 14<sup>th</sup> day of September, 2021. The application is by way of chamber summons which was taken out under the provisions of section 25 (1) (b) of the Magistrates Courts Act [Cap. 11 R. E. 2019] (the MCA) and it is supported by an affidavit deposed by the applicant.

In a nutshell, the applicant's affidavit tells that on 14/09/2021, she filed an appeal in this court via e-filing system. When the Deputy Registrar received the same and scrutinized the documents, he notified her to this effect: *Be advised to obtain decree on appeal, as such in view of section 25 (3) of the MCA submit your appeal at DC Morogoro. He then signed.* Immediately after receiving the opinion from the Deputy Registrar the

applicant made the necessary follow up and, in the course, she found out that only a copy of ruling was supplied to him without being availed with a copy (*decree (sic)*) drawn order and that the same was yet to be prepared. She contended that at the time she succeeded to obtain a copy of drawn order, her learned advocate Mr. Tonny Richard Mushi who could prepare the documents for her was in Moshi for his vacation. On 10<sup>th</sup> January, 2022, advocate Mushi resumed to his work and advised her to file an application for extension of time hence, this application.

With the parties consensus' this application was disposed of by way of written submissions. The applicant's written submission was drawn and filed by Mr. Tonny Richard Mushi, learned advocate, whereas the respondent's submission was also drafted and filed by Mr. Adolf Wenceslaus Mahay, learned advocate.

In her written submission in chief, the applicant highlighted that on 13<sup>th</sup> October, 2021, she filed her appeal in this court through e-filing system within time against the ruling of the District Court of Morogoro, at Morogoro which was delivered on 14<sup>th</sup> September, 2021. However, on 15<sup>th</sup> day of October, 2021 the Honorable Deputy Registrar did not admit the appeal and was given an instruction to firstly obtain a copy of drawn order to pursue her appeal.

She went on submitting that upon receiving those directives from the Deputy Registrar, immediately she wrote a letter dated 18<sup>th</sup> October, 2021 to the District Magistrate In-charge of Morogoro District Court requesting for a certified copy of drawn order. She submitted that she waited until on 4<sup>th</sup> November, 2021. When she received the same, she was informed by her



advocate Mr. Tonny that at the material time he was on long vacation until 10<sup>th</sup> January, 2022 when he could resume in his office. It is the applicant's submission that failure to obtain a copy of drawn order, and his advocate being away on long vacation these are sufficient reasons to warrant this court extend time and allow her to file her appeal out of time. To substantiate her arguments, the applicant referred this court to the case of **Raymond Nasibu Mwaipalu v. Republic**, Miscellaneous Criminal Application No. 67 of 2021 HC and **Isaack Wilfred Kasanga v. Standard Chartered Bank of Tanzania Limited**, Civil Application No. 453 of 2019 - CAT (All unreported).

On the other hand, the respondent contended that the applicant failed to demonstrate sufficient or good cause after she had failed to file the appeal within time, that is within 30 days. The respondent submitted further that counting from 14<sup>th</sup> September, 2021 when the first appellate court delivered its ruling to 2<sup>nd</sup> February, 2022 when the applicant filed the instant application for extension of time, it is almost a delay of 138 days. The respondent submitted further that the applicant was supposed to account for each day of delay but she did not. She referred this court to the decision of the Court of Appeal of Tanzania in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (Unreported) where it held *inter-alia* that:

*"It is trite law that where there is inaction/delay on the part of the applicant, there ought to be some kind of explanation or material to enable the Court to exercise its discretion. Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".*

The respondent also cited the decision of our Apex Court in **Isack Sebegele v. Tanzania Portland Cement Co. Ltd**, Civil Application No. 25 of 2002 (Unreported), which cited with approval the case of **Alison Xerox Sila v. Tanzania Harbours Authority**, Civil Reference No. 14 of 1998. In this case the Court held *inter-alia* that:

*"Lapsed inaction or negligence on the part of the Applicant seeking extension of time does not constitute sufficient cause to warrant extension of time".*

Having gone through the rival submissions advanced by both parties and the applicant's affidavit, the only issue which needs consideration, determination and decision thereon at this stage is; *whether the applicant has established sufficient cause to warrant this court to extend time.*

Frankly speaking, on perusal of the applicant's affidavit and her written submissions, I have found that the same do not enlighten exactly the reasons for delay to file her appeal within the prescribed time (30 days). In the instant application, the applicant argued generally that his advocate Mr. Tonny Richard Mushi was away on vacation until when he returned on 10<sup>th</sup> January, 2022. On this facet alone, the applicant did not account for the reasons of delay from 10<sup>th</sup> January, to 2<sup>nd</sup> February, 2022. Counting from 14<sup>th</sup> September, 2021 to 2<sup>nd</sup> February, 2022, it is almost more than 130 days. Since the record reveals that there was a considerable lapse of time from 14/09/2021 to 2/2/2022 the applicant tells nothing on those lapsed days. As much as she argued generally, this court is of the opinion that the applicant has failed to meet the three-tests mode or formulated legal guidelines of extending time as it was underscored by the Court of Appeal of Tanzania in



the case of **Lyamuya Construction Company LTD V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT - Arusha (Unreported) where the Court at page six of the typed judgment held that:

*"(a) The applicant must account for all the period of delay,*

*(b) The delay should not be inordinate and*

*(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take".*

Since there is plentiful reasons to believe that the applicant totally failed to manifest good or sufficient cause and further failed to meet any of the three-tests and/or the minimum threshold articulated in the case of **Lyamuya Construction Company LTD V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (Supra), I tend to agree with the respondent's learned advocate that the instant application is devoid of merits.

In the result, this application is hereby dismissed with costs. **It is so ordered.**

**DATED at MOROGORO** this 19<sup>th</sup> day of August, 2022.



  
**M. J. CHABA**

**JUDGE**

**19/08/2022**

**COURT:**

Ruling delivered at my hand and Seal of the Court in Chamber's this 19<sup>th</sup> day of August, 2022 in the presence of Mr. Abdul Bwanga, learned advocate h/b for Advocate M. Sanga who appeared for the Applicant, but in absence of the Respondent.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

**M. J. CHABA**

**JUDGE**

**19/08/2022**

**Court:** Right of the parties fully explained.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

**M. J. CHABA**

**JUDGE**

**19/08/2022**