

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TEMEKE HIGH COURT SUB - REGISTRY)

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO 27 OF 2022

*(Arising from Civil Appeal No. 36 of 2019 of the Kinondoni District Court before Hon.
Lyamuya – RM)*

ISRAEL ENOSY FUNGO..... APPLICANT

VERSUS

VICTOR VALENTINE CHIBWANA.....RESPONDENT

RULING

17/08/2022 & 22/08/2022

I.C. MUGETA, J

The applicant is represented by Neema Kimambo, learned advocate. He applies for extension of time to appeal against the decision of the Kinondoni District Court dated 22/02/2022. The reasons for delay are two. Firstly, that the impugned decision was supplied after expiry of the appeal period and secondly that from 22/03/2022 when the document was supplied to 16/05/2022 when the application was electronically lodged, the lawyer was doing research to figure out what course of action to take.

Mugeta

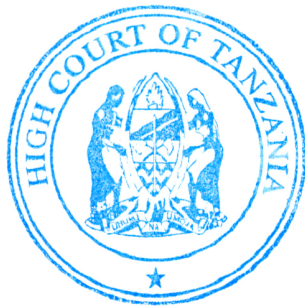
Mr. Brash, learned advocate, represents the respondent. On the hearing date both counsels agreed with the court that the application can be decided on the contents of the affidavit and counter affidavit without additional argument of the parties as the principles of law upon which this application can be decided are settled. On that account, they left it to the court to consider the merits of the application based on the averments in those documents.

At paragraph 6 of the counter affidavit, it is deponed that the decision was ready for collection on 11/03/2022 and indeed the respondent got it on that date. This discredits the argument that the delay was due to unsupplied documents which I find to be false. Indeed, the impugned decision was certified as true copy of original on 11/03/2022.

Assuming it is true that the document was delayed and was supplied on 22/03/2022 as alleged in the affidavit, the applicant is bound to account for each day spent to 16/05/2022 which is the filing date. The period covers more than 40 days. The argument that the lawyer spent that time figuring out which course of action to take is self-defeating. At paragraph 6 of the affidavit, it is alleged that on 22/03/2022 when the applicant obtained the decision, the lawyer told him that the appeal period had expired. Therefore,

the course of action was obvious, namely to apply for extension of time. On this account, the delay to take action from 22/03/2022 to 16/05/2022 is inordinate and each day is unaccounted for.

Consequently, I find the application without merits. I dismiss it. No orders as to costs as this is a probate relate matter.




I.C. MUGETA

JUDGE

22/08/2022

Court: - Ruling delivered in the presence of Neema Kimambo, advocate for the appellant and Ida Rugakingira, advocate for the respondent and in the absence of both parties.

Sgd: I.C. MUGETA

JUDGE

22/08/2022