

**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. 19 OF 2022

(Arising from Probate Appeal No. 46 of 2021 of the Kinondoni District Court before A.M. Lyamuya – PRM, Original Probate Cause No. 116 of 2002 of the Kinondoni District Primary Court at Kinondoni).

SWALEHE SELEMAN.....APPLICANT

VERSUS

KESSY SEIF.....1st RESPONDENT
ASHA SEIF.....2nd RESPONDENT
TUNU SEIF.....3rd RESPONDENT
HELA SEIF.....4th RESPONDENT
SAAD SEIF.....5th RESPONDENT
RAHMA SEIF.....6th RESPONDENT

RULING

11/08/2022 & 30/08/2022

I.C. MUGETA, J

In paragraph 5 and 6 of the affidavit the applicant, who is represented by Ramadhani Chaurembo, learned advocate, gives reasons for the delay to appeal leading to this application for extension of time. The same are that he became aware that the decision had been rendered on 20/04/2022 while it was delivered on 03/02/2022. Then he engaged an advocate who could

not act immediately for want of instructions. This application was lodged online on 18/05/2022.

The averments in paragraphs 5 and 6 of the affidavit are disputed under paragraphs 3, 5 and 6 of the counter affidavit deposed by Muhktary Chache counsel for the respondents. He states that when the decision was rendered on 03/02/2022 the applicant was present in person.

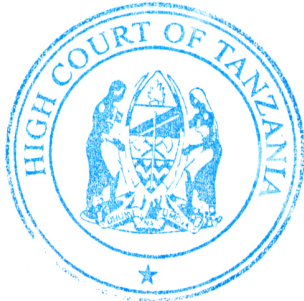
Page 9 of the decision of the lower court partly reads:

***'Court:** Ruling delivered this 3^d day of February 2022 in the presence of Mukhtary Hassan Chache, advocate and respondent (sic) in person'.*

The applicant was the respondent at the lower district court. Since he does not challenge the correctness of the lower court record, I find his averment in the affidavit that he was unaware of the decision to be a false statement. Further, the period between 20/04/2020 – 18/05/2022 is unaccounted for. Failure to instruct the advocate is not a sufficient cause for the delay.

In that regard, I hold that he has not given a sufficient reason for the delay nor accounted for each day of the delay.

In the event, I dismiss the application with costs.



Mugeta
I.C. MUGETA

JUDGE

30/08/2022

Court: - Ruling delivered in chamber, in the presence of the applicant and the 1st, 3rd and 4th respondents also represented by Mukhtary Chache advocate.

Sgd: I.C. MUGETA

JUDGE

30/08/2022