

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**(PC) MISC. CIVIL APPLICATION NO. 16 OF 2022**

*(Arising from Civil Appeal No. 2 of 2021 of The District Court of Tanga at Tanga, originating  
from Civil Case No. 8 of 2021 of the Tanga Urban Primary Court at Tanga)*

**HAMISI JUMA FUJO.....APPLICANT**

**-VERSUS-**

**SHABANI JUMA.....RESPONDENT**

**RULING**

*Date of last order: 23/07/2022*

*Date of ruling: 27/07/2022*

**AGATHO, J.:**

This is an application made under Section 25 (1) (b) of the Magistrates Courts Act Cap 11 R.E 2019 and Section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019]. The Applicant prays this Court to grant an order for extension of time within which he can file his appeal out of time. The Applicant also prays that the Respondent be condemned to pay costs and any other order (s) deem fit and just to grant.

The Application was supported by the Applicant's Affidavit and the same was disposed by way of written submissions. The Applicant was represented by Mr. Mambosasa while the Respondent was represented by Mr. Chanjarika, advocates.

While submitting, the counsel for the Applicant prayed to adopt the Applicant's affidavit to form part of the submissions. According to the Applicants affidavit along with the submission from the learned counsel, the Applicant was the Appellant in PC. Civil Appeal No. 17 of 2021 at the High Court of Tanga, Civil Appeal No. 2 of 2021 of the District Court of Tanga at Tanga and the Respondent in the Civil Case No. 8 of 2021 of the Tanga Urban Primary Court. That sometime the Respondent filed a suit against the Applicant and when the same was determined, the Respondent was successful. He appealed to the District Court and became unsuccessful, he later appealed to this Court, however the appeal was struck out on legal technicalities. He further submitted that though the time limited by the law had lapsed, he still intends to appeal against the decisions of the lower Courts and that is the reason for filing this Application and he has a sufficient cause to do so.

The counsel added that the previous appeal was filed within the prescribed time and though the same was struck out, that hadn't he took a wrong cause then the appeal could be regarded timely filed. He stated that the Applicant filed an appeal in a wrong Registry. Also, the same was entitled as Memorandum of Appeal instead of a Petition of Appeal which was struck out on the 24<sup>th</sup> day of February,

2022. He therefore pleaded this Court to grant an application in order to file a competent appeal against the decision of the District Court in Civil Appeal No. 2 of 2021.

Mr. Chanjarika submitted that though he did not file a Counter Affidavit, he does not object the Application. That, although the Applicant took a wrong course, that constitutes a technical delay.

In the case of **Fortunatus Masha v. William Shija and Another [1997] TLR 154** it was held that;

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted".*

According to the above case, technical delay may be a ground for the Court to grant an order for extension of time. In the instant Application however, the appeal was struck out on the 24<sup>th</sup> day of



April, 2022. The Application for extension of time was filed on the 13<sup>th</sup> day of April 2022. It is not disputed that there was a delay and the same was not accounted for.

In the case of **Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, the Court held that:

*"Delay of even a single day has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken." from the reason advanced by the applicants, I find that they have not shown good cause and accounted for the delay to the standard required."*

The Applicant therefore is duty bound to make sure that the days of the delay are accounted for. In this Application, the Applicant's submission is based on the issue of technical delay. Again, in the case of **Mobrama Gold Company Ltd v. Minister for Energy [1998] TLR 426** it was held that;

*"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the applicant's delay does not constitute a case of procedural abuse or contemptuous default and because the*

*Respondent will not suffer any prejudice, an extension should be granted".*

The Applicant did not act promptly in filing the Application however, an application for extension of time is entirely the discretion of the court though it has to be exercised judiciously. Additionally, the court is required to dispense justice without being tied with legal technicalities. This is according to Article 107(2) (e) of the Constitution of The United Republic of Tanzania, 1977 as amended. Now, considering the fact that the Applicant has stated in his affidavit that there are issues of law that deserves to be determined in the appeal and the Respondent has not been prejudiced with the Application then it is in the interest of justice that the application is granted so as to enable the Appellant to file an appeal properly.

The Application is therefore granted as prayed for. The Applicant is given 14 days from the date of receiving a copy of the Ruling to file an appeal in a proper registry. Given the nature of the present application, each party shall bear its own costs.

It is so ordered.

**DATED at TANGA** this 27<sup>th</sup> day of July, 2022.



  
**U J. AGATHO**

**JUDGE**

**27/07/2022**

Date: 27/07/2022

Coram: Hon. Dr. U. J. Agatho, J

Applicant: Mambosasa Advocate for

Respondent: Chanjarika Advocate for

C/C: Zayumba

**Court:** the ruling is delivered today 27/07/2022 in the presence of Mambosasa the Applicant's counsel and Chanjarika learned counsel for Respondent.



**U J. AGATHO**

**JUDGE**

**27/07/2022**

Right of Appeal explained.



  
**U J. AGATHO**

**JUDGE**

**27/07/2022**