

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC.CRIMINAL APPLICATION NO. 205 OF 2018

(Arising from the Decision of the District Court of Kinondoni at Kinondoni in Criminal case No. 388 of 2015)

BETWEEN

MICHAEL MWAILUPE..... APPLICANT

VERSUS

REGINA KARAWA ROGATHE MUSHI.....1ST RESPONDENT

VUMILIA AUCTION MART2ND RESPONDENT

HAPPINESS FIDELIS3RD RESPONDENT

RULING

MRUMA, J.

This application which is made under section 2(1) of the Judicature and Application of Laws Act, Cap.358 R.E 2019 is seeking for leave to file revision to revise the proceedings made by the District Court of Kinondoni in Criminal Case No.388 of 205 of 2015 out of time. As it is the practice the application is supported by the affidavit of Michael Mwailupe stating the reasons upon which the application is made.

Upon being served with the applicant's application together with the supporting affidavit the 3rd Respondent Happiness Fidelis filed a counter affidavit contesting it.

This application was presented for filing on 10th June 2021. According to

Mr. Joseph Sang'udi Counsel for the Applicant, the Applicant was not satisfied with the decision of the District Court of Kinondoni. He preferred a revision to this court as a result of which on 13.2.2002 this court nullified the proceedings of the district court. The third Respondent was aggrieved and preferred another revision to the Court of Appeal which on 12.11.2012 quashed the decision of this court. In the said decision of the Court of Appeal allowed the Applicant to file a fresh suit in this court and joining the third Respondent who was not a party to the first Revision.

According to the counsel for the Applicant in 2013 the Applicant filed a Criminal Revision No. 2 of 2013 which was withdrawn on 2.03.2015 and filed Criminal Revision No.4 of 2015 which was struck out on 23.10.2018. It is the counsel's prayer that this court extends time and allow him to file another revision.

In Reply Ms. Suzan, Advocate for the 3rd Respondent contended that the Applicant did not account for each day of delay. she pointed out that from the day when the second Application was struck out on 23.10.2018 to the date when the current application was filed that is on 10.06.2021, no account has been given on delays.

The law under which this application is pegged, i.e. section 2(1) of the Judicature and Application of Laws Act (Cap 358 R.E 2019) provides that:-

"Save as provided hereinafter or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters".

In my view this provision doesn't vest any power to this court to grant leave to file revision. The section simply states the jurisdiction of the High court in Civil and Criminal cases. That notwithstanding, in any event power of court to grant or not to grant leave to do any act is discretionary. Before it is exercised court must satisfy itself there are sufficient reasons or causes which prevented the Applicant from doing the act with the prescribed time.

In the present case, the Applicant has shown step by step what transpired in court from 12.11.2012 to 29.08.2018. It appears he spent all that time busy in court corridors pursuing for what he considered to be his legal rights. But surprisingly in his affidavit and in his submissions he is silent on what he was doing from 29.08.2018 when his last application was struck out to 10.06.2021 when he filed the present Application. In the case of **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016** (unreported), the Court of Appeal stated that;

"Delay 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".

In the present at hand the Applicant didn't account for delays as from the time when his last application was struck out in August 2018. Thus, I agree with the Respondent's counsel that the Applicant have failed to account for everyday of delay.

Since the Applicant did not account for more than two years that means that he did not give sufficient reason for his delay to apply for leave.

For those reasons I find this application to be both misconceived in law and to be filed without any justifiable cause. Accordingly it is dismissed with costs.



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

A.R Mruma

JUDGE

Dated at Dar Es Salaam this 27th September, 2022.