

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MUSOMA DISTRICT REGISTRY**  
**AT MUSOMA**

**MISCELLANEOUS CIVIL APPLICATION NO. 51 OF 2021**

**(Arising from the decision of the District Court of Bunda at Bunda in  
Civil Case No. 14 of 2019, M.P. Kamuntu, RM)**

**BETWEEN**

**FINCA MICROFINANCE BANK LTD ..... 1<sup>ST</sup> APPLICANT**

**CHAMPION AUCTION MART ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**FATUMA JUMANNE SOLOKA ..... 1<sup>ST</sup> RESPONDENT**

**GALANI BULILO GALANI ..... 2<sup>ND</sup> RESPONDENT**

**MWANAID RAJABU MASINI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A.A. MBAGWA, J.**

Before this Court, the applicants filed the present application seeking for the following orders;

1. That this Honourable Court be pleased to extend time within which to file an appeal to this court against the judgment and decree of the District Court of Bunda District at Bunda delivered on 19<sup>th</sup> March, 2021, which is otherwise barred by limitation of time.

2. Any other order (s) as this Honourable Court shall deem just and fit to grant in the circumstance.
3. Costs of this application be provided for.

The application was brought by way of chamber summons made under Sections 14 (2), 19 (1)(2) and 21 (1) of the Law of Limitation Act [Cap 89 R.E. 2019] and Order XLIII Rule 2 of the Civil Procedure Code [Cap 33 R.E 2019] and it is accompanied by an affidavit deposed by the applicants' counsel Tupege Anna Mwambosya. The respondents did file a counter affidavit to contest the application.

Brief facts giving rise to the present application can be summarized as follows; The 1<sup>st</sup> respondent successfully instituted the suit against the applicants before the District Court of Bunda in Civil Case No. 14 of 2019. The 1<sup>st</sup> applicant was aggrieved by the judgment and decree of the District Court of Bunda in Civil Case No. 14 of 2019. She thus, lodged an appeal before this Court in Civil Appeal No. 9 of 2021.

This Court found the appeal incompetent for not being accompanied by the copy of the judgment and consequently went on to strike out. The applicants are still determined to refile the appeal but they are out of time hence this application at hand.

In the applicants' affidavit, the deponent states that upon preparing an application for extension of time after the striking out of the first appeal, they discovered some clerical errors in the decree and judgment hence they took some time to consult the District Court of Bunda for rectification up to 7<sup>th</sup> October, 2021.

On the hearing date of this application, the applicants were represented by Wilbard Kilenzi, the learned advocate. The application proceeded *ex parte* against the respondents since they failed to enter appearance despite being duly served.

Submitting in support of the application, the applicants' counsel adopted the supporting affidavit and went on to aver that the first appeal which was struck out was filed within time but it was struck out due to legal technicality i.e., the petition of appeal was filed with only one attachment namely, copy of decree without a copy of judgment.

He proceeded further that, after striking out of the appeal, when they went to execute the court directives, they noted that there were clerical errors i.e., the dates in the decree and judgment were differing hence they spent sometimes to rectify them.

The counsel contended that, they have counted each period of delay in this application. He added that, there is also illegality in the judgment

sought to be impugned. He went on submitting that there are variances between the pleadings and the evidence in respect of type of marriage. The counsel lamented that the pleadings state that it is customary marriage whereas in the evidence it is alleged that it is Islamic marriage. Referring to the case of **Lilian Onael Kileo vs Fauzia Jamal Mohamed**, Commercial Case No. 135 of 2013, High Court at Dar es Salaam, the applicant's counsel expounded that it is the position of law that one should not depart from what he pleads in the pleadings. He concluded by praying the Court to grant the application without costs.

I have heard the applicants' counsel submissions and thereafter gone through his affidavit. The issue for determination here is whether the applicants had the good reason(s) sufficient for this Court to grant extension of time.

What constitutes good or sufficient reason is not decisively explained or listed. Good causes are determined basing on the circumstances of each case. However, the law is settled that, in considering whether to grant the extension of time or otherwise, the court takes into account the factors including: (a) the length of the delay; (b) whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; (b) whether the Court finds other sufficient reasons, such as the existence of a point of

law of sufficient importance, like the illegality of the decision sought to be challenged. There is a plethora of authorities on that position, including the case of **Damas Assesy and Another vs Raymond Mgonda Paula** and 8 Others, Civil Application No. 232/17 of 2018, CAT at Dar es Salaam (unreported) and **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

In brief, the applicants' reason for delay is what is known as technical delay. The first appeal i.e., Civil Appeal No. 9 of 2021 was filed within time but was struck out for technical ground. There after they found clerical errors in the impugned judgment and decree and took some times to get them rectified from the trial court. Undeniably, technical delay is now a good ground for extension of time. See the case of **Yara Tanzania Limited Vs. Db Shapriya & Co. Limited**, Civil Application NO. 498/16 OF 2016, CAT at Dar es Salaam.

Having gone through the applicant's deposition, I am of the considered findings that the applicant has demonstrated a sufficient cause for this Court to grant extension of time. I therefore find the application meritorious and I allow it.

The applicant is therefore given thirty (30) days from the date of this order to file an appeal. No order as to costs.

It is so ordered

The right of appeal is explained.



A handwritten signature in blue ink, appearing to read "A. A. Mbagwa", is positioned above the printed name.

**A. A. Mbagwa**

**JUDGE**

**03/10/2022**

**Court:** The ruling has been delivered in the absence of both parties this

3<sup>rd</sup> October, 2022

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**A.A. Mbagwa**

**JUDGE**

**03/10/2022**