

**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.14 OF 2022

*(Arising from Civil Appeal No. 122 of 2018 of Temeke District Court before Hon. Kihawa
- RM)*

MOHAMED ATHUMANI BODO..... APPLICANT

VERSUS

LEILA KALEB MAKUNDI RESPONDENT

RULING

09/08/2022 & 03/11/2022

I.C. MUGETA, J

This is an application for extension of time within which the applicant can file an appeal. The decision to be challenged was passed on 30/09/2019. The reasons for the application are two. Firstly, that the applicant fell sick and lost contacts with his advocate. Secondly, that the decision of the trial court has illegalities which need to be addressed by way of appeal in that the first appellate court ignored the fact that he failed to comply with the schedule to file written submissions as he was saved late with the submissions of the other party. These reasons are contained at paragraphs 6, 11 and 12 of the affidavits. He has attached the medical chits as annexure MAB4.

Mgeta

In the counter affidavit and the supplementary counter affidavit the respondent has averred that the medical chits attached to the affidavit are forged. While the affidavit alleges that the applicant was treated at Muhimbili hospital, a report from that hospital (annexture LKM2 to the supplementary counter affidavit) says that the medical chits attached are not theirs and the applicant was never admitted to that hospital.

The applicant is represented by David Andindile, advocate, while the respondent is represented by Kasanda Mitungo, learned advocate. Their written submissions in support and opposition of the case are more or less repeating the contents of the affidavits, counter affidavit, the supplementary counter affidavit and reply to counter affidavit.

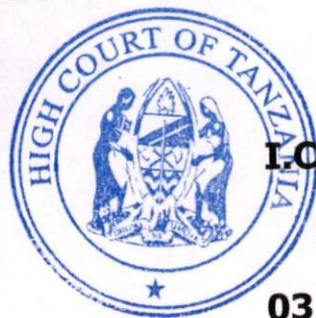
The evidence from Muhimbili hospital that the medical chits filed by the applicant are forgery is not disputed at all. Therefore, the allegation that the delay was caused by illness is a farce. It follows, therefore, that the applicant has lied under oath. Illness was not a reason for his failure to appeal in time as he has not proved that he fell sick.

On illegality, it is my view that failure to consider the argument that the applicant could not file written submissions for not being served with the

submissions of the other party is a matter of fact not law. Therefore, no illegality has been established.

In the event, I hold that the application has no merits. I dismiss it with costs.

I wish to comment on the allegedly forged documents. Filing forged documents in court is unacceptable. Lying under oath is detestable by any standard. I direct the Deputy Registrar to report the alleged forgery to the police for criminal process actions. The respondent and his advocate are ordered to cooperate when the criminal process starts. I see no liability on party of the advocates who prepared the pleadings. However, I advise advocate to be watchful of the documents their clients submit to advance their cases in court.



Mugeta
I.C. MUGETA

JUDGE

03/11/2022

Court: Ruling delivered in the absence of the applicant and in the presence of Kasanda Mitungo, advocate for the respondent present in person.

Sgd: I.C. MUGETA

JUDGE

03/11/2022