

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

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 590 OF 2019

(Arising from the Misc. Civil Application No. 311 of 2017)

RHOBI ALPIUS KERARYOAPPLICANT

VERSUS

THE TANZANIA PEOPLES

DEFENCE FORCES.....1ST RESPONDENT

HONOURABLE ATTORNEY

GENERAL.....2ND RESPONDENT

RULING

Date of last order: 2/7/2021

Date of Ruling: 22/02/2022

S.M. KULITA J;

This is an application of extension of time to appeal to the Court of Appeal out of time and to file a Notice for that purpose against the ruling and drawn order of Misc. Civil Application No. 311 of 2017. The application has been brought under section 11(1) of the Appellate Jurisdiction Act [Cap 141 RE 2019]. It is accompanied with a chamber summons and the affidavit sworn

by **RHOBI ALPIUS KERARYO**, the applicant. The matter was scheduled to be disposed of by way of written submissions. However, it is only the applicant who complied to the scheduling orders, hence the matter proceeded *ex-parte*.

In her written submission in support of the application the applicant submitted that the cause of delay was that the trial Judge was on leave as a result there was a delay on the supply of the copy of the ruling for Misc. Civil Application No. 311 of 2017 delivered on 28th December, 2017 from which this application arises. She said that the said copy of ruling was then obtained on the 5th day of March, 2018.

The applicant went on to submit that soon after obtaining the said copy, through her Advocate, she opted to file an application for Review No. 7 of 2018 against the said Misc. Civil Application No. 311 of 2017. In her explanation for the cause of delay, the applicant realized that the proper remedy was appeal instead of review. She further submitted that the trial Judge in the Review No. 7 of 2018, Hon. Ngwala, J (Rtd) was of the view that she could not review the decision of another Judge. Thus, she is obliged to file this application for extension of time to appeal as a way forward towards filing the intended appeal at the Court of Appeal as a substitute for the Review No. 7 of 2018 which was struck out.

With reference to section 11(1) of the Appellate Jurisdiction Act, the applicant submitted that the court has discretion to grant extension of time upon being moved by good cause. Further to that the applicant submitted that she was diligent to file the application at hand, hence the court should consider the application.

In conclusion, the applicant prayed for this court to grant the application.

Having considered the submission and affidavit of the applicant in respect of this application, I have noticed that the issue for determination is whether the applicant has established sufficient cause for this court to grant the application.

Section 11(1) of the Appellate Jurisdiction Act Cap 141 [RE 2019] provides;

"Subject to subsection (2), the High Court, or where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned may, extend the time for giving notice of the intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal....."

It is from the above provision that this court is vested with powers to extend time but upon the applicant showing good

cause. Upon going through the records for this application, it is evident that the copies of the impugned decision was supplied to the applicant on the 5th day of March, 2018 but the application at hand was lodged on the 2nd day of October, 2018, that is after the lapse of almost 211 days from the date of delivery of the impugned decision, for no sufficient reasons. The applicant was diligent for promptly filing the Notice of Appeal and apply for the supply of the copies ruling and proceedings for the said Misc. Civil Application No. 311 of 2017, but she was negligent for lodging Application for Review instead of Appeal, the act which led to this unnecessary delay.

In **BENEDICT MUMELO V. BANK OF TANZANIA, Civil Appeal No. 12 of 2002, CAT at DSM** it was held;

"An application for extension of time is entirely in the discretion of the court to grant or refuse it, and the extension of time may be granted where it has been sufficiently established that the delay was with sufficient cause"

In her written submission and contents of Paragraph No. 14 of her affidavit the applicant stated that the delay was caused by her Advocate opting to file application for review instead of appeal. It is my considered view that this cause of delay is insufficient for this application to be granted. The reason behind

is that uncertainty of remedy to pursue has never been a sufficient cause for the court to grant extension of time. It is nothing but ignorance of law which has also never been a good defence.

From the foregoing analysis, I am of the settled mind to hold that the applicant was negligent for filling unnecessary application which ended up unsuccessfully to her. I therefore dismiss the application for lack of merit.

As the applicant is a pauper, I grant no orders as to costs.



S.M. KULITA

JUDGE

22/02/2022

