

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC CIVIL APPLICATION NO 370 OF 2021

(Originating from PC Civil Appeal No 117 of 2020 before De-Mello J.)

BETWEEN

DICKSON PAULO SANGAAPPLICANT

VERSUS

MACRINER JUSTINE CHAFURESPONDENT

RULING

MRUMA, J.

The applicant is moving the court for an order for extension of time within which she can file a notice of appeal against the decision in this court in the PC. Civil Appeal No. 117 of 2020. The applicant is also seeking for an order for extension of time within which to file an application for certification of a point of law out of time.

The application is lodged under the provisions of Sections 5(2) (c) and 11(1) of the Appellate Jurisdiction Act and is preferred by way of Chamber Summons supported by an affidavit of Dickson Sanga, the

The Respondent has strongly opposed the application through a counter affidavit deposed by Mr Macriner Justine Chafu, the Respondent herein.

At the hearing of this Application the Applicant was represented by Mr Noel Sanga learned advocate and the Respondent appeared in person and unrepresented. The application was argued by way of written submissions. During his submissions the Applicant abandoned. second and third prayers in the chamber summons and maintained the rest.

It is now settled principle in our law that for the Application for extension of time to succeed, Applicant must show good cause.

The applicant's main reason for the delay in this matter is that he was not aware of the date of delivery of the judgment. The court record shows that matter was fixed for judgment on 22/7/2021 and the judgment was delivered on 15/6/2021 without notice to the parties.

The Respondent submitted that Applicant has failed to account for every day of the delay as required by law but rather he had shown sloppiness in lodging his intended application and thus it has no merit and cannot make this h court to use its discretionary powers to extend time. She referred this court to the case of **Moses Muchunguzi v. Tanzania Cigarette Co. Ltd Civil Reference No. 3** of 2018 at page 13.

Extension of time is a judicial discretion bestowed upon the court and as any other discretion of the court it has to be exercised judiciously

this criterion was emphasized by the Court of Appeal has developed criterion in the case of **Ngao Godwin Losero v. Julius Mwarabu, Civil Appeal No. 10 of 2015 CAT Arusha** (Unreported). It was also stated in that case that each case should be determined in its own circumstances. I shall thus be guided by the above principles in determining this application.

I have gone through the affidavit in support of the application and particularly paragraphs 5, 6, 7 and 8 thereof in which the Applicant is stating that he was unaware of the date of delivered of the judgment. This contention is supported by the record of the court which reveals that the matter was fixed for judgement on 22/7/2021, but it was delivered on 15/6/2021, thirty six days before the date it was fixed for judgment. The record doesn't show that the Applicant was given notice of the change of date of judgment. This delay was made by the court itself therefore the consequence thereof is a technical delay. In the case of **Fortunatus Masha v. William Shija and Another** [1997] TLR 154. The Court of Appeal had this to say:-

"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 delay 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".

In my view the fact that the Applicant was not aware of the date of judgment is a good and sufficient cause for the delay in filing his notice of to appeal. I, therefore grant the Application. I extend time for 14 days from the date of delivery of this ruling to the parties. I make no orders as to the costs.

Order accordingly.




A.R. Mruma,

JUDGE

16/11/2022.