

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPL .113 OF 2019**

*( Originating from Civil Case No. 215 of 2005)*

**LUCAS MWAIPOPO MWAKABANGA**

**MOHAMED HAIZER**

**DEOGRATIS RUTAKYAMIRWA and 32 others** } .....**APPLICANTS**

**VERSUS**

**THE MANAGING DIRECTOR OF TANZANIA** }

**PORTLAND CEMENT COMPANY LIMITED** } ..... **RESPONDENT**

**RULING**

**MRUMA, J.**

This application must fail. The Applicants are seeking indulgence of this court to grant them an extension of time to file a notice of intention to appeal, to the Court of Appeal against the decision of this court (Msuya J, as she then was) which was delivered on 12<sup>th</sup> February 2015.

The Application is brought under section 11(1) of the Appellate Jurisdiction Act [cap 141 RE. 2017? and Section 95 of the Civil Procedure Code [cap 33 RE 2019] and as is the practice, it is supported by the affidavit sworn by the Applicants.

Section 11(1) provides as follows;

*"Subject to sub- section (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 intention to appeal from a Judgment of the High Court or of the subordinate court concerned for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."*

Appeals from the High Court to the court of Appeal are governed by the Court of Appeal Rules. Rule 83(1) of the said Rules provides that:

*"Any person who desires to appeal to the Court of Appeal shall lodge a write notice in duplicate with the Registrar of the High Court."*

Under Rule 83(2) the law says:

*"Every notice shall subject to the provisions of rule 91 and 93 be so lodged within thirty days of the date of the decision against which it is desire to appeal."*

As stated hereinbefore, the Judgment which the Applicant is intending to challenge was handed down on 12<sup>th</sup> February 2015 and this application was presented for filing on 6<sup>th</sup> March 2019 a period of approximately 1247 days which is over three years and five months. The

main reason for the delay is the allegation that the Applicant were moving from the office of the principal Judge to the office of the Chief Justice writing one letter after the other and receiving replies thereto.

It is common ground that the facts giving rise to the case are generally not disputed. The only issue is whether on the facts sufficient reasons for the delay in giving notice of appeal to the Court of Appeal has been shown.

As stated above under Rule 83(2) notice of intention to appeal has to be lodged within 30 days of the impugned decision. In the case at hand the present application was presented for filing on 6<sup>th</sup> March 2019. This is more than 1247 days or over three (3) years outside the period prescribed under Rule 83(2). The only explanation given for delay was that ***"unguided the Applicants went from the office of the Hon. Principle Judge to the office of the chief Justice writing one letter after the other...."***

The issue is whether moving from the office of the Principal Judge to the office of the Chief Justice searching for administrative interventions in purely legal issue constitutes sufficient reason within the ambit of section 11(1) of the Appellate Jurisdiction Act. On my part, I am settled in my mind that in the circumstances no sufficient reason has been shown. The counsel for the Respondent has urged that the delay was caused by lack of diligence on the part of the Applicants. I do agree.

The Applicant's suit was not dismissed but it was struck out on the ground that it was not properly presented for filing as there was no evidence of payment of court fees. It is trite law that no appeal lies from an order for striking out a matter. Appeal is available only for a matter

which uses from a dismissal order. After the striking out orders instead of filing the suit afresh they lodged and application searching for restoration by way of review (which I think it was a correct forum) but worse still after the review was denied on the ground of time limitation, instead of filing the suit afresh, (of course subject to limitation period), the Applicants resorted to application for extension of time. This constitutes negligence which is not a good reason for extension of time.

That said, the application is dismissed with no order as to costs.



A. R. Mruma

**Judge**

**16/2/2022**