

**IN THE HIGH COURT OF TANZANIAIA UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 396 OF 2019**

*(Arising from the ruling in Civil Revision No.25 of 2010 of the District of Court of Kinondoni  
at Kinondoni delivered by Hon. Nyamalani Esq RM on 8<sup>th</sup> June 2015)*

**SHABANI HEMED MTUNGUJA .....APPELLANT**

**VERSUS**

**SALMA ELDAD MMARI .....1<sup>st</sup> RESPONDENT**

**MTC AUCTION MART CO. LTD.....2<sup>nd</sup> RESPONDENT**

**JULIUS MACHA.....3<sup>rd</sup> RESPONDENT**

**RULING**

**MRUMA,J.**

This is an application for extension of time within to file appeal out of time. The Applicant **SHABAN HEMED MTUNGUJA** was the applicant in Revision Application No.25 of 2010 of whereby he applied for a revisional order to nullify and set aside the sale of his property he complained that if was sold under the market value as compared to the valuation report. That Revision Application was dismissed by the court on 8<sup>th</sup> June, 2015 for the reason that it was preferred under wrong provision of the law.

The applicant being aggrieved by that decision, he has applied for extension of time to file appeal out of time on the following ground:

- i. That, he had to make follow up of the case file and request to be supplied with copy of the ruling but he was informed by the court that the case file was misplaced and that he would be informed when the file is found.

- ii. That, the delay to file an appeal was not occasioned by any negligence on his part as he was making several follow ups but was not informed when the ruling was ready.
- iii. That, his revision application which he filed in the District Court was wrongly dismissed by the Court for simple reason that it was preferred under the wrong provision of the law instead of being struck out.

Together with affidavit the Applicant annexed copy of the ruling in Civil Case No.25 of 2010 (Annexure TLC 1) letters to the Resident Magistrate Court to request for a copy of the ruling (Annexures TLC2), TLC2 (3), TLC 2(4), TLC2 (5), TLC 2(6), TLC 2(7), TLC 2(8) and copy of proceedings Civil Revision No. 42/2007, TLC3.

In his reply submissions, the 3<sup>rd</sup> Respondent contended that it was the Applicant's negligence not to lodge an appeal timely. It said that although the applicant wrote a requesting letter to be availed with certified copy of ruling but almost nine(9) months left by the applicant in vain unexplained. He cited the a decision of the Court of Appeal Civil Application No. 226/01 of 2017 and insisted that, follow up a certified copy of ruling up to time when this application was lodged it is almost 4 years this affirm the applicant's never acted diligently. He said that negligence and lack of diligence by the applicant's is not a good cause for applicant to be granted the extension of time to file appeal out of time.

He prayed for this Court to struck out the application with cost on 3<sup>rd</sup> defendant's favour.

I have fore through the parties submission. Having gone through both side's submission and I am aware of applicant's and the records of this court and the court's below submission in support of his application through peruse of the Court file, It is my conviction that the Applicant's

the delay to file an appeal was caused by both court; failure to furnish him with a certified copy of ruling in time as indicated in Applicant's letters to request for certified copies of judgment and decree in Civil Revision No. 25/2010 and the response he received from the District Court and from this court AND negligence on his part.

The record shows that all documents which the Applicant had requested for purpose of appeal or for the action were ready for collection more on 11<sup>th</sup> May 2019, and this application was presented for filing on 22<sup>nd</sup> August 2019 which is a period of over five months. The Applicant did not give any account for this delay.

It is trite law that in an application for extension of time the Applicant must account for everyday of delay [see for instance Karibu Textiles mills Commissioner General TR, Civil Application No. 192/2016. In Bushiri Hassan vs Latifa Laluo Mashayo (Civil Application No.3 of 2007 (unreported) (CAT), the court held that.

*"Delay of even a single day has so be accounted for otherwise there would no proof of having rules prescribing periods within certain steps to be taken."*

Finally there is a principle which is of the very greatest importance in the administration of justice and that principle is this; it is in the interest of all persons that there should be and to litigations [See Lakhe most Brothers Limited Vs R. Raja & sons (1966) EA 313 at 314.

In the case at hand the Applicant did not give any account for the delay for the period of five (5) months from March 2019 when copies

proceedings, ruling, and orders of the District Court were ready for collection to August 2019 when he filed this application. In the circumstances he has failed to show good cause that would entitle him extension of time sought. This application is consequently dismissed with costs.



A handwritten signature in blue ink, appearing to read "A. R. Mruma".

A. R. Mruma

**Judge**


**28/2/2022**

**28/2/2022**

Coram : Hon. R. A. Mruma,J.  
For the Applicant : Mr. Jones Kilimba for Applicant  
For the 1<sup>st</sup> Respondent :  
For the 2<sup>nd</sup> Respondent :  
For the 3<sup>rd</sup> Respondent : Mr. Thomas Mathias for 3<sup>rd</sup> Respondent.

**Court:** Ruling delivered.



  
A. R. Mruma

**Judge**

**28/2/2022**