

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 10/2021
(Arising from PC Civil Appeal No. 141/2019)

ANNA STEVEN NYAGAWA.....APPLICANT

VERSUS

**TADEO MODESTUS MBILINYI (Administrator of the
estate of the late MARIO MODESTUS MBILINYI).....RESPONDENT**

RULING

5/11/2021 & 21/1/2022

E.B. LUVANDA, J

The applicant above mentioned is seeking for extension of time within which to apply for certificate on point of law in order to appeal to the Court of Appeal of Tanzania. In the affidavit in support of the chamber summons, the applicant grounded that she delayed to apply for certificate on point of law due to the fact that she was not supplied with a copy of judgment which she was physically following up until on 18th December 2020 when she collected the same. That she took it to her lawyer, but her lawyer was travelling to Kilimanjaro for holiday leave. That her delay was not based on her fault or negligence.

In opposition, the respondent countered that the applicant negligently failed to collect copy of judgment which were available since 18th November, 2020.

According to the copy of judgment and decree attached to the affidavit reveal that the judgment was delivered on 18/11/2020 and the decree was extracted on 27/11/2020. As such an argument of the respondent that the judgment was ready for collection since 18/11/2020 is invalid. This is because judgment and decree are inseparable documents in as far as taking steps to appeal to the Court of Appeal is concerned. I therefore nod with the applicant that the Court had delayed to avail copies of judgment and decree which are essential for a process of applying for certificate on point of law as aforesaid. Again the applicant explained that at the time she obtained a copy of judgment and decree her lawyer was travelling on leave to Kilimanjaro, where she was obliged to procure another lawyer who was available in January who assisted her to draft the application. To my view, the applicant have ably demonstrated and accounted for delay including taking initiative and efforts to hire another lawyer to assist her on drafting legal documents, which connote pro activeness on her part to take essential steps timely. In this regard, a call by Mr. Richard Chediel Kihara learned Counsel for respondent who invited this Court to assess whether or not the application has been brought promptly; valid explanation for delay and diligence on the part of the applicant. To my opinion, all three tests were met by the applicant, as I have demonstrated above.

The applicant is therefore granted an extension of fourteen (14) days to apply for a certificate on point of law.

The application is granted. I make no order for costs as the application originate from a probate cause.



E.B. Luvanda

Judge

17/1/2022