

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MIC. CIVIL APPL. NO. 144 OF 2021

*(Original the decision of Mwanza Urban Primary Court at Nyamagana in Civil Case No. 286 of 2020 and
and decision of District Court of Nyamagana in Civil Case No. 50 of 2020)*

CHRISTOPHER COSMAS.....APPLICANT

versus

FURAHA EVARIST..... RESPONDENT

RULING

24th Nov, 2021 & 17th January, 2022

RUMANYIKA, J:.

The application is for extension of time within which Christopher Cosmas (the applicant) to lodge an appeal against decision of Nyamagana district court of even date. It is supported by affidavit of Christopher Cosmas whose contents the applicant adopted during audio teleconference hearing on 24/11/2021.

Unlike the applicant who appeared in person, Furaha Evarist (the respondent) had legal service of Mr. Musa Nyamwero learned counsel. I

heard them through mobile numbers 0755 706 650 and 0716 543 137 respectively.

The applicant in a nutshell he submitted; (1) that wrongly though, instead of filing it in the district court very strangely he filed Civil Appeal number 46 of 2021 hereto and it was only on that ground struck out on 29/10/2021. He is now back hence the delay (2) that layman and poor as was he had no legal means and assistance to act timely. That is all.

Mr. Musa Nyamwero learned counsel submitted that the applicant had neither assigned sufficient ground nor accounted for each day of the delay notwithstanding whether or not he was layman/ignorant of the law and procedure (case of **Ally Kinonda and 2 others v. Republic**, Criminal Application No. 1 of 2016 (CA) unreported much as the applicant's appeal was struck out on 29.10.2021 but without any explanation it took him say five (5) days to come back (case of **A-one Products and Brothers v. Abdallah Almas and 25 Others**, Civil Application No. 586/19 of 2017 (CA)) unreported. That it would have been meaningless if the law of limitation wasn't always observed. We pray that the application be dismissed with costs. The learned counsel rounded up his point.

In rejoinder, the applicant submitted that the decision striking out his appeal was arrived at and delivered in his absence on a Friday thereby followed by 2 consecutive non-working days. That is all.

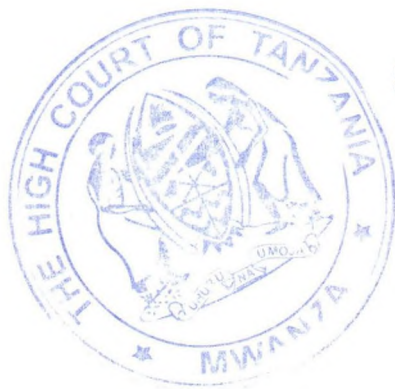
The central issue is whether the applicant has assigned sufficient grounds for extension of time much as I would agree with Mr. Musa Nyamwero learned counsel that ignorance of law constituted no sufficient ground (cases of **Ally Kinanda & 2 Others (supra) also Ngao Godwon Losero v. Julius Mwarabu**, Civil Application No. 10/2012. I would increasingly hold that if, for instance lack of court filing fees or, like pleaded here ignorance of law constituted a sufficient ground not only everybody would have raised it but also possibilities of endless litigation would not have been ruled out.

The applicant may have had not been aware of his appeal being struck out on a Friday until after the week end yes, but still he was duty bound to account for each day, if at all of the remaining three days (cases of **A-One Products & Brothers (supra) and Bushiri Hassan v. Latifa Lukia Mashao**, Civil Application No. 3 of 2007 (CA)) unreported. Even where it was only one day delay suffice the above stated points to dispose of the application.

Without prejudice to therefore going discussion, I could not know if it was by design or accidentally that the applicant did not append copy of the decision of Nyamagana district for which extension of time was sought for the intended appeal. Both the practice and common sense demanded that the dopy of the decision be attached not only with a view to the court granting extension but also in terms of timing to see into validly and tenability of the intended appeal.

In the upshot, the wanting application is dismissed with costs. It is so ordered.

Right of appeal explained.



S.M. RUMANYIKA

JUDGE

20/12/2021

Date: 17/01/2022

Coram: A.W. Mmbando – DR

Applicant: Present in person

Respondent: Musa Nyamwero Advocate

B/C: Martina R. Nelei – RMA

Mr. Musa: The application was coming for ruling, I am ready to receive it.

Applicant: I am also ready to receive it.

Court: Ruling delivered this 17th January, 2022 in the presence of both parties as indicated above.



A.W. MMBANDO
DEPUTY REGISTRAR
17/01/2022