

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. CIVIL APPLICATION NO. 148 OF 2021

(Arising from in Civil Appeal No. 25 of 2020; and Civil Appeal No. 17 of 2019 before Ilemela District Court. Originating from Civil case 159/2018 of the Primary Court of Ilemela District at Ilemela)

1. MATHIAS PAUL MTASA APPLICANT

VERSUS

**1. RUTH MHOJA
2. ONESMO MRUSHI
3. EMMANUEL MRUSH**

}**RESPONDENTS**

RULING

17th March, 2022

KAHYOZA, J.:

This is an application for extension of time; **one**, to file a Notice of Appeal, **two**, to apply to the Deputy Registrar of the High Court for required documents, and **three**, to file an appeal to the Court of Appeal of Tanzania against the decision of the High Court of Tanzania at Mwanza.

The background of this matter is that the applicant instituted a suit in the primary court of Ilemela district at Ilemela, which awarded Tzs. 550,000/= only against the 2nd respondent and dismissed the claims against the first and the third Respondents.

Aggrieved, the applicant appealed to the District Court of Ilemela. The district court decided favour of the Respondents.

Dissatisfied still, the applicant appealed to this Court, which gave the judgment in the respondent's favour on 11th June, 2021. The High Court

fixed the date of judgment on 03rd of June, 2021 and delivered the same on 11th of June, 2021 in the absence of both parties without notice of the change of date.

The applicant wants to approach the Court of Appeal of Tanzania, but he is out of time, hence the instant application. He adduced one ground of appeal that the judgment was delivered in the absence of the parties. He deposed in the affidavit and submitted orally that he was unable to file a notice of appeal on time as the court did not inform him the date of delivery of the judgment date.

Mr. Mwamsiku, the Respondents' advocate opposed the application with two points namely; the applicant did not account for each day of delay and the application is not based on good reasons. Speaking on the applicant's ground that he was not notified of the judgment delivery date and that, the judgement was delivered in his absence, the respondents' advocate told this Court that this ground is baseless as the applicant did not state when he became aware of that the judgement was delivered. The learned advocate referred this Court to the decision of the Court of Appeal of Tanzania in the case of **Sebastian Ndaula V. Grace Rwamafa**, Civil Application No. 04 of 2014 (CAT Unreported)

Regarding the second ground, the learned advocate stated that, the applicant adduced no good cause for delay. He contended that the applicant delayed for 136 days without disclosing the reason for the delay. The applicant was expected to account for each day of delay but he has failed to do so. To cement his argument, Mr. Mwamsiku referred this court to the decision of the Court of Appeal of Tanzania in the case of **Rashid**

Abik Nguwa Vs. Ramadhan Hassan Kuteya & Another, CIVIL APPEAL NO.431 OF 2021 at page 12 (CAT Unreported). Finally, Mr. Mwamsiku, argued that the applicant delayed for a long time for sufficient reasons.

In his rejoinder, the applicant told this Court that he made follow up to be supplied with a copy of the judgement ended given empty promises. He concluded that the judgment was delivered in absence and he was not given a copy of the judgment on time.

It is trite law that a party seeking for an order of the Court to exercise its judicial discretion to grant the application for extension of time to do a certain thing or act, must show good cause for failing to do what he was supposed to do within the time prescribed by the law. This position has been taken the Court of Appeal of Tanzania in various cases including, **Abdallah Salanga & 63 Others Vs. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula V. Grace Rwamafa**, (Supra).

It should be noted that what constitutes good cause has not been defined, however the Court of Appeal of Tanzania has, in its various decisions stated number of factors to be considered. These are whether or not the application has been brought promptly, the absence of any valid explanation for the delay and whether the applicant has accounted for each day of delay and the lack of diligence on the part of the applicant. For instance, the decisions of the Court of Appeal in **Tanga Cement Company Limited V. Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application No. 06 Of 2001; **Omary Shabani Nyambu V. Dodoma Water And Sewerage Authority**, Civil Application No. 146

Of 2016 And **Wambele Mtumwa Shabaan V. Mohamed Hamis**, Civil Reference No. 08 Of 2016, (all CAT- Unreported).

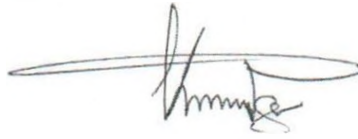
In the present case, the judgment was fixed to be delivered on 03rd June, 2022, but it is in the record that, the said judgment was delivered on 11th June, 2021 in virtual absence of both parties. There is no record prove that the Court informed parties change of the date of delivery judgment from 03rd June, 2022 to 11th June, 2021. It was the duty of the Court to notify the parties of the date of the delivery of judgment. Failure on the part of the Court to discharge the said obligation necessitated the filing of this application. I therefore, sufficient ground for granting the application. I find refuge in **Mabi Auctioneers (T) Ltd Vs. Nbc Holding Corporation**, Civil Application No. 158 OF 2005 (CAT-Unreported). The Court of Appeal in **Stanzia Stanley v the Registered Trustees of Agricultural Inputs Trust Funds and three others** Civil Appl. No.46/2005 Court of Appeal Tanzania – Dar es Salaam (unreported), held that-

"having regard to the peculiar circumstances of the case namely that the judgment was delivered without formal notification to the parties it is inconceivable that lack of diligence can be attributed to the applicant or her counsel for the delay in filing the notice of appeal."

I accordingly extend the time within which the applicant to file a Notice of Appeal against the decision of this Court in Pc. Civil Appeal No. 25 of 2020. I also extend time within which the applicant may apply to the Deputy Registrar of the High Court for the copies of the required

documents. The Notice of Appeal to be filed within fourteen days from today. No order as to costs. I allow the application.

It is ordered accordingly.

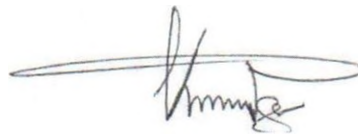


J.R. Kahyoza

JUDGE

18/03/2022

Court: Ruling delivered in the presence of the applicant, the third respondent present and Mr. Silas advocate for the respondents. B/c Ms. Jackline (RMA) present.



J.R. Kahyoza

JUDGE

18/03/2022

