

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 114 OF 2021

*(Arising from the decision of the District Court of Arusha at Arusha in Civil Appeal No. 33 of 2021
originating from Arusha Urban Primary Court Civil Case No. 41 of 2021)*

VICENT SYLIVESTER..... APPLICANT

VERSUS

HADIJA SALUMU.....RESPONDENT

RULING

17/05/2022 & 17/05/2022

KAMUZORA, J

The applicant brought an application for extension of time to file an appeal before this court out of time. The application is brought under the provision of section 25 (1) (b) of the Magistrates Courts Act (MCA) Cap 11 RE 2019. The applicant is praying for extension of time to appeal against the decision of the District Court of Arusha in Civil Appeal No. 33 of 2021. The application is supported by the affidavit of the applicant which the counsel for the applicant prays to be adopted to form part of the applicant's submission.

In her submission in support of application Mrs. Kimale submitted that, the judgement was delivered on 27/10/2021 and the applicant applied for copies of judgement through a letter dated 28/10/2021. That, the court issued copy of judgement on 19/11/2021 but after going through the copy of judgment it was discovered error on the number of the appeal before the district court as the judgement indicated Appeal No.

67 of 2021 instead of No. 33 of 2021. That, the counsel for the applicant applied for correction and the correct judgement was issued on 26/11/2021. That, the appeal was wrongly filed in the High Court and returned on 13/12/2021 on account that it was supposed to be filed in the District Court. That, by time the appeal was returned by the High court the time to appeal had already lapsed. That, the applicant opted for this application praying for extension of time to file an appeal. Mrs. Kimale insisted that the delay was technical hence this court finds that there was no negligence on the party of the applicant.

She also referred the attachment explaining the circumstances which are; a letter to apply for copy of judgment which is annexure, a copy of judgment of the district court annexure B which shows that the appeal number was wrong and annexure C which a corrected copy of judgment. She added that, the intended appeal is likely to succeed and attached annexure D which is the intended grounds of appeal to this court.


Mrs. Kimale supported her argument with the decisions of the Court of Appeal of Tanzania in the case of **Fortunatus Masha Vs William Shjia and others, Civil Application No 6 of 1997 TLR 1997, 154** and the case of **Salvandy K.A. Rwegasira Vs Chna Henan International Group Company Limited, Civil Reference No. 18 of 2006 (unreported)**. That, in those cases the Court of Appeal allowed the extension of time in considering the delay which was technical and where the applicant acted diligently. Mrs. Kimale insisted that in this application the applicant was diligent in making follow up of the case and his delay was beyond his control as explained in the affidavit in support

of the application. She thus reiterated the prayer for the grant of this application.

The Respondent, Hadija Salum after hearing the submission by the counsel for the applicant had no objection to the application. She agreed that the applicant be allowed to appeal based on the reasons advanced here in court.

I have considered the chamber application, the affidavit in support of application which is fully adopted and forming part of the applicant's submission. I have also considered the oral submission by the counsel for the applicant. Despite filing the counter affidavit, the respondent during the hearing of the application opted not to object the application. From the records, the reasons advanced by applicant in his affidavit as well in the submission by the counsel for the applicant surface the grant of this applicant. But again, taking into consideration that the application was not objected during hearing, I proceed on granting the application with no order for costs. The applicant is allowed to file an appeal within 21 days from the date of this ruling.




D.C. KAMUZORA
JUDGE
17/05/2022

