

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISCELLANEOUS CIVIL APPLICATION NO. 32 OF 2020

(Originating from District Court of Bariadi from Civil Case No. 17/2018)

LABAN ABAS.....APPLICANT

VERSUS

1.MADUHU MSIMBILA }

2.NKAMBA NTWALE }

.....**RESPONDENTS**

RULING

23th February & 19th April, 2022

A. MATUMA, J.

The applicant is seeking extension of time to appeal in this Court against the Judgment and Decree in Civil Appeal no. 27/2018 of the District Court of Bariadi dated 24/08/2018.

At the hearing of this application the parties who appeared in person adopted their respective affidavit and counter affidavit respectively.

According to the Applicant`s affidavit, when the impugned judgment was delivered he appealed to this Court timely vide Pc. Civil Appeal no. 4 of 2019 but in the due course it was discovered that the impugned decree was dated differently as against its impugned Judgment. He was thus necessitated to withdraw his appeal for incompetences with leave to refile.

The applicant has further deposed that he has now obtained a correct dated decree ready for appeal but cannot do so unless extension of time is granted to him.

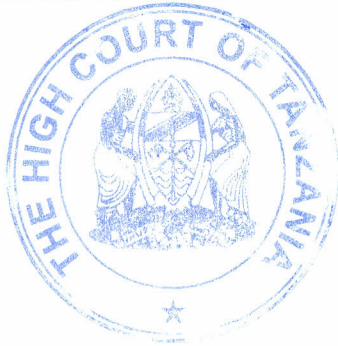
The respondents in their joint counter affidavit does not in essence dispute the contents of the applicant`s affidavit but blames him for having not discovered the error before lodging the incompetent appeal. To them the applicant was negligent to act on the improperly dated decree and therefore cannot be said to have accounted for each day of the delay.

On my side, I find this application to have been brought with sufficient cause. As it is reflected herein above, the Applicant had his appeal against the impugned judgment filed in time in this Court. But it was the appellant himself who discovered the anomaly on 07/05/2020 and prayed before Hon. Justice Mkeha to withdraw his appeal with leave to refile. The prayer was granted.

Since the applicant has already obtained the correctly dated decree, justice requires that he be allowed to appeal because the fault was not his but of the Court.

Denying him time to appeal would be condemning him on the errors he did not commit. Had the trial Court been supplied him the correctly dated decree in the first instance, his appeal could have not been incompetent and could have been decided on merits. I therefore allow this application and extend the applicant twenty-one (21) days within which he should lodge his intended appeal.

In the circumstances of this matter, I order no costs to either party. It is so ordered



A. MATUMA
Judge
19/04/2022