

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISC. CIVIL APPLICATION NO. 3 OF 2022

(Arising from Civil Case no. 05/2021 in the District Court of Kasulu, original Civil Case No. 6/2021 of Primary Court of Kasulu at Kasulu Urban)

PENDANAELI JAPHET KADANGI..... APPLICANT

VERSUS

FRANCIS SILAS MPESHA..... RESPONDENT

JUDGMENT

23/5/2022 & 26/5/2022

L.M. MLACHA, J

The applicant, Pendanaeli Japhet Kadangi was the appellant in the District Court of Kasulu in Civil Appeal No. 5/2021 (Original Civil Case No. 6/2021 of the Primary Court of Kasulu District at Urban Court). The judgment was pronounced against him on 17/9/2021 in favour of the respondent, Francis Silas Mpesa. The applicant was aggrieved by the decision and wants to lodge the appeal. He is out of time. Knowing that he is late, he filed an application for leave to file the appeal out of time. The application is made under section 25(1) of the Magistrates' courts Act, Cap. 11 R.E. 2019 and is accompanied

by an affidavit containing the reasons for the delay. There is a gap of 119 days in between.

When the application was set for hearing the applicant said that he was sick in the period. He pointed at his leg saying 'Cancer'. He had a medical chit on his hand but it could not be received because it was not one of the documents annexed to the affidavit. The respondent resisted saying that the applicant is a liar. He said that the story of sickness was a delay trick.

I have read the affidavit supporting the application. The grounds of delay are contained in para 7 and 8. Para 7 speaks of illegalities in the record of the lower courts. It is coached as "the trial Court ordered me to pay the whole sum of money without regards to my financial status". Para 8 speaks of overwhelming chances of success. There is no mention of sickness in the affidavit. It follows that the submission that the applicant was sick in the period was an afterthought. It was also baseless for being raised without proof. The allegation that there were illegalities in the decision of the lower court is baseless because what was stated in para 7 does not amount to an illegality. It is rather a ground of appeal which is based on facts.

Equally, the allegation that the appeal has an over whelming chance of success is baseless because that is not a ground for extending time. Time is extended on good cause being shown to justify the delay. An applicant has to account for each day of delay and show the court that there was no negligence on his side. See **Finca (T) Ltd and another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT) and **Bukuru Barugize v. Eveline Andrea**, Misc. Land Application No. 22 of 2021 (H/C). That was not done in this case.

That said, the application is dismissed with costs.



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L.M. MLACHA

JUDGE

26/5/2022

Court: Ruling delivered. Right of Appeal Explained.



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L.M. MLACHA

JUDGE

26/5/2022