

**IN THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**(MOROGORO DISTRICT REGISTRY)**  
**AT MOROGORO**

**MISC. CIVIL APPLICATION NO. 31 OF 2022**

*(Arising from Probate Appeal No. 07/2021 Kilombero District Court, Originating from  
Probate Cause No. 14/2018 Mkamba Primary Court)*

**MATRIDA GRINYO MWANAHANJI..... APPLICANT**

**VERSUS**

**ZUHURA HUSSEIN KILAMBO ..... RESPONDENT**

**RULING**

*Hearing date on: 12/12/2022*

*Ruling on: 03/02/2023*

**NGWEMBE, J:**

This ruling is a result of an application lodged by the applicant in this court under section 25 (1)(b) of **The Magistrate's Court Act, Cap 11 RE 2019** and section 14 (1) of **The Civil Procedure Code, Cap 33 RE 2019**. The applicant is seeking an extension of time to appeal to this court against the judgement and decree entered by the District Court in Probate Appeal No. 07 of 2021 dated 25/04/2022.

The affidavit in support the application was sworn by the applicant herself bringing forward the main reason for delay that, the district court failed to supply her with copies of judgment timely despite of writing a letter requesting for the same and physically making follow up to the court seeking for that copies of judgement. In turn the respondent countered the application by filing counter affidavit categorically, stating




that the applicant failed to account for each day of delay and no good cause is advanced for that long delay.

From the beginning both disputants herein sought legal assistances from advocate Saul Sikalumba for the applicant herein and advocate Sikujua Funuki for the respondent. The same advocates have appeared as well in this court. For convenient purposes, on 13/10/2022, this court ordered the disputants to address the application by written submissions. Both parties complied with the agreed schedule of filing their respective written submissions.

To recap just briefly, advocate Sikalumba in his written submission argued that, the judgment was delivered on 24<sup>th</sup> February, 2022 and copies of same were supplied to the parties on 25<sup>th</sup> April, 2022 when the applicant was already out of time. Section 25 of **The Magistrate's Court Act** demand any preferred appeal from the District Court must be lodged within thirty (30) days from the date of judgement. Likewise, section 14 (1) of **The Law of Limitation Act**, confers powers to this court to extend time to the applicant. As such the applicant justified her application that she had sufficient reasons for delay as demonstrated in her affidavit.

Applicant justified the application for extension of time by referring this court to Article 13 (6)(a) of **The Constitution of The United Republic of Tanzania** alongside with the case of **Abdallah Mponzi Vs. Daudi Mlwilo [2000] T.L.R. 328** which decision was based on natural justice and right to be heard.

Proceeded to cite the case of **Samson Kishosha Gaba Vs. Charles Kingongo [1990] T.L.R 133** and **Caritas Kigoma Vs. KG Deus Ltd [2003] T.L.R 420** on good chances of success and sufficient






cause. To him, the respondent will not suffer any prejudice. Thus prayed the application be granted.

In turn the respondent's advocate Funuki Sikujua counted by submitting that, the law governing appeals originates from Primary Court does not require attachment of copies of judgment in appeals of this nature. He supported his position by referring this court to the case of **Gregory Raphael Vs. Pastory Rwehabula [2005] T.L.R. 99** and **Swabaha Mohamed Shosi Vs. Saburia Mohamed Shosi, Misc. Probate Application No.67 of 2017**. On that basis the applicant failed to take action due to her negligence. Otherwise, she had a duty to account for each day of delayed, citing **Bushfire Hassan Vs. Latina Lucia Masanya, Civil Application No. 03 of 2007, CAT** and **Wambele Mtumwa Shahame Vs. Mohamed Hamis, Civil Reference No. 8 of 2016**.

After a clear glance of both parties' arguments, the main question for consideration is whether the application is meritorious. This being an application for extension of time to appeal, I have considered the provision of section 25 (1)(b) of **the Magistrate Courts Act, Cap 11 RE 2019** the same provides that: -

*"In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and **the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.**" (Emphasis supplied)*



In this matter the applicant is seeking extension of time. The case having originated from the decision of the Primary Court and that the decision upon which, the appeal is contemplated concerns the District Court's appellate jurisdiction, then the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, G.N. No. 312 of 1964** comes into play. Rule 3 provides clearly for the application of this nature, it reads: -

*"An application for leave to appeal out of time to a district court from a decision or order of a primary court or to the High Court from a decision or order of a district court in the exercise of its appellate or revisional jurisdiction shall be in writing, shall set out the reasons why a petition of appeal was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal or shall set out the grounds of objection to the decision or order"*

In the exercise of such powers, the court shall consider all the relevant factors to rule whether the applicant has demonstrated a sufficient cause for such application to be granted. In this respect, I am inclined to commence by referring to one of the most lucid judgement in **Shah Hemraj Bharmal and Brothers Vs. Santash Kumari w/o J. N. Bhola [1961] E.A 679** where it was *inter alia* held: -

*"The matter is one of discretion and we do not wish to lay down an invariable rule, but rules are made to be observed and where there has apparently been excessive delay, the court requires to be satisfied that there is an adequate excuse for the delay or that the interests of justice are such as to*






*require the indulgence of the court upon such terms as the court considers just".*

Parallel to the above, the Court of Appeal of Tanzania provided guidance on the factors which courts should consider in exercise of their discretion in the case of **Moses Muchunguzi Vs. Tanzania Cigarette Co. Ltd, Civil Reference No. 3 of 2018** (unreported) thus: -

*"The Court has therefore developed some factors which can be considered to constitute good cause. Some of these include promptness of taking action, the length of the delay, illegality and delay in being supplied with the necessary documents. However, despite that fact, it cannot be taken as an indication that every application for extension of time under Rule 10 of the Rules will be approached by the Court in a way similar to another application..."*

Collecting from the above, it can be said that the court's discretionary powers is based on whether to grant or refuse to grant extension of time. In so doing, it will consider each case based on its prevailing facts and circumstance. The main test is whether the applicant has established a sufficient cause for his/her delay. The applicant and her advocate seem to believe that they have demonstrated sufficient cause, including good chances of success in case extension of time is granted.

Generally, the applicant has advanced in paragraph 2 of her affidavit, that the court's judgment was delivered on 25<sup>th</sup> April, 2022 and that she made a number of physical follow ups to the District Court for copies of the judgment with no avail. The applicant even wrote a letter yet failed to get the required copy of judgement. Later she learnt



that those copies were ready when the respondent served her with proceedings for execution. At that time, alas she was already caught in the web of the Law of Limitation. That she could not materialize her intention to appeal against such decision, which she was aggrieved since its delivery. This is as per paragraphs 4, 5 and 6 of her affidavit.

Considering deeply on the contents of the affidavit and the supporting written arguments, I have observed some key features which will guide this court in determining conclusively this application. Paragraph 2 of her affidavit, the applicant states that, she filed an appeal No. 07 of 2021, whose judgment was delivered on 25<sup>th</sup> April, 2022, which same aggrieved her. Equally paragraph 4 contained the same contents, among others. Part of it is quoted: -

*"That immediately after delivery of the judgment, I expressed my dissatisfaction of that judgment. I further showed my intention to appeal by writing a letter applying for the certified copy of the judgment to enable me to file the appeal on time. I physically attended at the district court asking for the certified copy of the judgment but in vain. Despite the efforts to make follow ups for the certified copy of judgment the same were not been supplied to me as I obtained the same after the respondent came to me asking with a summons from primary court that she had filed an application for execution while two weeks ago I went at the Kilombero district court and I was informed by court clerk that the judgment has not been prepared but it was read in your absence"*

As above demonstrated, dates are not given on when she made the follow ups, not even the date she wrote a letter requesting for the



copies and she did not annex the said letter in her affidavit. She does not mention the date when the respondent came to her home and supply copies of judgment. In paragraph 6 she states that, thereafter she started to look for a legal service in aid of the relatives and met advocate Sikalumba. Again, she does not mention the day she met and engage the said advocate neither her advocate disclosed when he was engaged.

The rest of the paragraphs declare that she has a sufficient cause and greater chances of success. The delay was not for her negligence but for facts beyond her control.

The failure to state the dates has been consistently maintained by the advocate in his written submission as well. Above that, part of the submission contradicts the affidavit. That part of his submission is to the effect that: -

*"The certified copies of judgment was eventually released on 25<sup>th</sup> April, 2022 when it was already too late to file the appeal to this honourable court as the judgment was read on 24<sup>th</sup> February, 2022"*

In his written submission the learned advocate proceeded to argue that the applicant came to know that the judgment was read (probably pronounced) when the respondent filed execution. While in her affidavit the applicant stated that she expressed her dissatisfaction immediately after the judgement was delivered.

Mr. Funuki submitted that annexing copies of judgment is not the requirement of our law. That the applicant would still file her appeal within time even without copies of judgement and that generally, the applicant was bound to account for the whole period of delay. First, I

accept Mr. Funuki's submission as a correct digest of the law in respect of the applicant's duty to account for days delayed.

Apart from the cases of **Bushfire Hassan Vs. Latina Lucia Masanya** and **Wambele Mtumwa Shahame Vs. Mohamed Hamis** cited by the learned counsel, there are countless precedents including that of **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** where the Court of Appeal ruled that: -

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

I take judicial notice that this position of law is well known to both advocates in this case. Although it is even confusing, on when did they secure the copies, and all the vague statements pointed above, I am satisfied that there was no need of copies of the judgment for the applicant to pursue her right of appeal. The applicant cannot be heard to complain that the copies were the reason for her delay.

Again, as earlier observed, the affidavit and submissions of the applicant are contradictory and vague. Even with a serious consideration of the submissions and arguments by both parties, this court has failed to see what made the applicant fail to file her appeal on time. These contradictions and uncertainties of the applicant's submissions were not expected in this case where Mr. Sikalumba represented the applicant even at the district court and hence expected to be conversant with the applicable laws of appealing from the district court to this court on a suit originates from primary court.

Regarding the chances of success, Mr. Sikalumba submitted that the lower courts' findings were tainted with illegalities. I have considered



the nature of this application and I am settled that what was ruled in **William Sunday Vs. R, Criminal Appeal 9 of 2015 [2015]** and **Dominc Ishengoma Vs. Geita Gold Mining Ltd, Civil Application 146 of 2020 [2022] TZCA 803** deserves to be followed in this case. Chances of success is not only an outdated ground, but also a fact which the court at this stage cannot test. If it attempts to do so, may prejudice the parties or pre-empt the merit of the intended appeal. In **Dominic Ishengoma Vs. Geita Gold Mining Ltd**, the Court of Appeal clarified this position in the following terms: -

*"As regards the applicant's contention that there were overwhelming chances of success of the intended appeal, with respect, it no longer constituted good cause for extension of time. See- M/s Regimanuel Gray (T) Ltd v. Mrs. Mwajabu Mrisho Kitundu and 99 Others, Civil Application No. 420/17 of 2019 and The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe and 4 Others, Civil Application No. 191/06 of 2019 (both unreported)"*

In the circumstances of this application, obvious the applicant failed to establish a sufficient cause for this court to exercise its powers under section 25 (1)(b) of the **Magistrates Courts Act**, to extend time. All the above gives a strong conclusion that, this application has no merit, same is dismissed. Considering the nature of the matter, I order that each party should bear his/her own costs.

**Order accordingly.**



**P. J. NGWEMBE**

**JUDGE**

**03/02/2023**

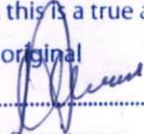


**Court:** Judgment delivered at Morogoro in Chambers on this 03<sup>rd</sup> day of February, 2023, **Before Hon. A.W. Mmbando, DR** in the presence of applicant in person and Respondent in person.

**Sgd: A.W. Mmbando**

**DEPUTY REGISTRAR**

**03/02/2023**

I Certify that this is a true and correct copy of the original	
	
Deputy Registrar	
Date	13/2/23 at Morogoro