

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 206 OF 2022

(Arising from Civil Appeal No. 202 of 2017)

STANBIC BANK TANZANIA LIMITED ----- APPLICANT

versus

PAUL FRANCIS KILASARA ----- RESPONDENT

Date of last Order: 01/12/2022

Date of Ruling: 03/03/2023

R U L I N G

MGONYA, J.

Before me is an Application for extension of time to extend time for the Applicant to give notice of the intention to appeal against the whole decision of the High Court of the United Republic of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Hon. Justice J. S. Mgetta) dated 6th December, 2018 in **Civil Appeal No. 202 of 2017.**

Further that this Honorable Court be pleased to grant the Applicant an extension of time for making an application for leave

to appeal against the whole decision of the High Court of the United Republic of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Hon. Justice J. S. Mgetta) Dated 6th December, 2018 in **Civil Appeal No. 202 of 2017.**

The Application is pegged under the Provisions of **Section 11 (1) of the Appellate Jurisdiction Act**, supported by an Affidavit of **LILIAN GAWILE** the Applicant's Principal Officer.

As the disposal of this matter was order to be by way of written submissions, then for the Applicant's submission, it is important to reproduce the averments of paragraph 12 of the Applicant's Affidavit which according to the Applicant, it suggests sufficient reasons causing the delay to file a notice and leave in regard of appealing the Civil Appeal No. 2020 of 2017 respectively. It reads:

"4. That upon being supplied with copies of Decision Judgment and Decree I learn that the Decree was issued against the Applicant in the Land Application No. 29 of 2011 leaving out Land Application No. 70 of 2012 of which I belonged".

It is the Applicant's averment that the above reason of which is among others, demonstrates the reason of the Applicant's delay and hence the prayer sought.

On the other hand, the Respondent herein has vehemently denied the application saying that there is no any good reason nor justification for the prayer sought. He insisted that, this kind of application must adhere to the principles laid down, promptness being one of them. In that regard, let me refer the Respondent's few paragraphs as they appear in his written submission to strengthen his objection. He stated that:

First, the Applicant has failed to court for the number of days as from 12th October, 2021 when the notice of appeal was struck out, to the date of 15th November, 2021 when the first Misc. Application No. 585 of 2021 was filed. Here the 27 days are not counted for.

Second, the Applicant has failed to count for the number of days as from 29th April, 2022 when the first application was struck out on 29th April, 2022 to the date of 17th May, 2022 when the present application was filed. Here 19 days are not counted for.

Third, the Application has failed to accounting for the number of days as from 11th May, 2022 when the Applicant alleges that he

obtained the order in Misc. Application No. 586 of 2021 up to 17th May, 2022 when this application was filed. Here 6 days are not counted for.

The Respondent further insisted that every day of delay should be counted. The case of ***PATRICK JOHN BUTABILE V. BAKHRESA FOOD PRODUCTS LTD***, Civil Appeal No. 61 of 2019, ***MATHEW T. KITAMBALA V. RABSON GRAYSON AND ANOTHER***, Criminal Appeal No. 330 of 2018, and ***JUBILEE INSURANCE COMPANY (T) LIMITED V. MOHAMED SAMMER KHAN***, Civil Application No. 439/01 of 2020 (*supra*), were cited to support the position.

I am alive that an Application for extension of time is entirely in the discretion of the Court to grant or refuse it and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.

The protracted question is whether the averments stated in the Applicant's Affidavit and submission amounts to sufficient cause.

I am aware as the law stands under **Order XXXIX Rule 1 of the CPC** that the fundamental documents for purpose of Appeal originated from lower court in exercised to its original Jurisdiction

to this Court are Judgment and copy of the Decree. The consequence of failure to attach these documents of course makes the appeal incompetent and always sanctioned the penalty of struck out.

Being aware with the requirement of the Law above and with its consequence, it is my opinion that the Applicant exercised due diligence as evidenced in its affidavit where he prompted the court to be furnished with those necessary documents for purpose of Appeal. This shows on how the Applicant was active in prosecuting her matter.

In view of the above, I find that the Applicant cannot be penalized for a mistake done by the court which was the Authority to tender the said documents on time.

For the above reason delay to be supplied with copies of Judgments, decree containing different material particulars indeed contributed to the delay by the Applicant to appeal with prescribed period. In that respect without flicker of doubt, it is my settled view that the delay was with sufficient cause.

In the upshot, **the Application is hereby granted.**

Thus, the Applicant is ordered to file the **notice to appeal** and **leave to appeal** to the Court of Appeal within **14 days** from the date of this Ruling.

I make no order as to costs.

It is so ordered.



L. E. MGONYA

JUDGE

03/03/2023