

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 71 OF 2022**

(B/U High Court Arusha Misc. Civil Application No. 247/2015)

**PROSPER MAKURU.....APPLICANT**

**VERSUS**

**ANNA MUNISI.....RESPONDENT**

**EX-PARTE RULING**

12/12/ 2022 & 28/03/2023

**MWASEBA, J.**

The applicant before this Court is seeking for extension of time within which to file a notice of intention to appeal and leave to appeal to the Court of Appeal of Tanzania against the decision made by the High Court of Arusha via Misc. Civil Application No. 247 of 2015. The application was supported by an affidavit of Mrs. Christina Kimale, learned counsel for the applicant.

During the hearing of this application, Mrs. Kimale learned counsel represented the applicant. The matter proceeded ex-parte against the respondent as she never entered appearance despite of being duly

served through substituted service by publication. The application was disposed of by way of written submission.

Supporting the application, Mrs. Kimale argued that, the applicant herein was the appellant in Civil Appeal No. 93 of 2019 before the Court of Appeal sitting in Arusha where he was challenging the act of the court dismissing his application to file revision out of time via Misc. Land Application No. 247/2015. The said Appeal was struck out on 30<sup>th</sup> November 2021 for being filed out of time. Thereafter, the applicant filed Misc. Civil Application No. 104 of 2021 seeking for extension of time to issue notice of Appeal out of time against the decision of Misc. Land Application No. 247/2015. The same was struck out on 9/06/2022 for being filed under wrong provision of law although it was later on revealed that the provision of law was correct.

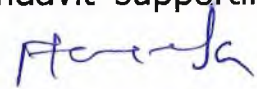
It was her further submission that, the current application was filed on 14/6/2022 almost 6 days after the previous application was struck out. The sole reason for being late was the time he was in court pursuing his case as the same was being struck out on technical grounds as submitted under paragraph 7,8,9 and 10 of the affidavit supporting the application. She prayed for the court to grant the application to cure the illegalities and irregularities found on the intended decision to be revised

by the court of appeal. She supported her arguments with the case of **Juma vs Diesel and Auto Electric Services Ltd and Others** (2008)<sup>1</sup> E.A 148 and **Kahunga and Company Advocates vs National Bank of Commerce Limited** (2006) No. 235.

Having summarized the applicant's submission above, it is now time for the determination of the application, and the main issue to be considered is whether the applicant has given sufficient reasons to enable this court to exercise its discretion to grant the relief sought. As it was held in the case of **Livingstone Silay Haru vs Collifred Temu** [2002] TLR 268, that: -

*"It is discretion on the part of the court to grant the extension of time depending on sufficient reason being given to explain the delay."*

From the records, the applicant has demonstrated that he was late as he was in the court corridors pursuing his case since, he filed Misc. Civil Application No. 96 of 2017 then Civil Appeal No. 93 of 2019 before the Court of Appeal of Tanzania at Arusha. Thereafter he filed Misc. Land Application No. 104 of 2021 which was struck out on 9/06/2022 as evidenced by the documents attached in her Affidavit supporting the application.

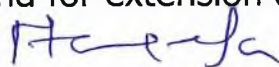


In this regard, this court is of the view that the reason advanced by the applicant is sufficient as it has been well established as to how he was pursuing his cases and how they were struck out based on technical grounds.

As for the issue of illegalities, although it was mentioned by the applicant but the same was not explained as it was held in the case of **Finca (T) Limited and Another vs Boniface Mwalukasa**, Civil Application No. 589/12 of 2018 where the Court of Appeal had the following to say:

*"It is, however, significant to note that the issue of consideration of illegality when determining whether or not to extend time is well settled and it should borne in mind that, in those cases where extension of time was granted upon being satisfied that there was illegality, the illegalities were explained."*

Applying the above position of the law in relation to the application at hand, the applicant has only stated that the decision which is intended to be appealed against contains illegalities and irregularities without explaining the said illegalities. Therefore, in this application the issue of illegalities will not be considered as a good ground for extension of time.



From the foregoing, I am convinced with the first ground put forth by the Applicant. The application is hereby granted, and the applicant is given 21 days to file his notice of intention to appeal to the Court of Appeal and an application for leave to appeal to the Court of Appeal.

Ordered Accordingly.

**DATED** at **ARUSHA** this 28<sup>th</sup> day of March 2023.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba", is written over the printed name.

**N.R. MWASEBA**

**JUDGE**

**28/03/2023**