

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

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 280 OF 2021

(Arising from civil case No. 12 of 2016)

IGNAS ROMWARD MSAGAYA ----- APPLICANT

VERSUS

LIVINUS SAMATO ----- 1ST RESPONDENT

BLESS MAKANGANYA ----- 2ND RESPONDENT

R U L I N G

Date of last Order: 11/08/2022

Date of Ruling: 28/3/2023

MGONYA, J.

The Applicant herein made this Application under **Section 14 (1) of the Law of Limitation Cap. 89 [R. E. 2019]**. The application filed before this court is supported by an affidavit that has been sworn by **Shalom Samwel Msakyi** counsel for the applicant duly instructed to do so, seeking for the following orders:

- 1. This Honourable Court grant an order of extension of time to the applicant herein to file an appeal against the decision of Civil Case No. 12 of 2016 dated 20/9/2017;***

2. Costs of this suit;

3. Any other relief this Honourable Court deems fit and just to grant.

The Respondent filed a Counter Affidavit challenging the Application filed before this Court. When the matter came for hearing before this Honourable Court, the same was disposed off by way of Written Submissions as prayed by the counsel of the parties. The same was granted by this Court and both parties complied with the scheduled order. The applicant was represented by **Shalom Msakyi**, Learned Counsel whereas the Respondent represented by **Jackson Liwewa**, Learned Counsel.

The Applicant in his submission prayed for an extension of time to file his appeal out of time based on the first ground that, when the Judgment was delivered by the Trial Magistrate before **the Kilosa District Court on the 20/07/2017**, the Applicant believed that copy of Judgement and proceedings were essential requirements to lodge an Appeal before the High Court. The Applicant then began to make follow up with copies of the Judgement and proceeding and it is this process that led to his delay.

In the cause, the Applicant wrote a letter on **4/8/2017** to be avail with copy of Judgement and Decree. On **2/10/2017** the

Applicant herein receive a Judgment which contain a different date of Judgment was dated on **20/9/2017** instead of **20/7/2017**. On **30/10/2017** Kilosa District Court issued with a correct certified copy of a Judgment. The copies of such decision were issued after the lapse of **983 days** since the decision was delivered by the trial court. The Applicant's counsel cited the case of **Benedict Mumello V. Bank of Tanzania Civil Appeal No 12 of 2002**, (Unreported) whereas the Court of Appeal held that;

"In conclusion, we are of the firm view that, the delay to be supplied with copies of proceedings and judgment, and the two copies of decrees containing different material particulars, contributed to the delay by the respondent to appeal within the prescribed period. In that respect, it is our considered view that the delay was with sufficient cause."

Second ground for delay was said that, the time spent in court prosecuting **Civil Appeal No. 246 of 2017** and rectifying errors on the Ruling lead to the technical delays. It was further submitted that, after obtaining the Judgment and Decree an Appeal was filed as **Civil Appeal Na. 246 of 2017** and on **30/5/2019** assigned before **Hon. Kulita, J.** who dismissed the same for being time barred which renders the matter conclusive while the law requires

matters of appeal out of time be struck out. Further, time spent prosecuting **Misc. Civil Application No. 41 of 2021** as stated on paragraph 8, 10 and 11 of the Affidavit in support of this application hence the applicant ought to redress such error by filling of **Misc. Application No. 41 of 2020** to be excused as stated under **section 6(c)** of Law of Limitations Cap 89. **Section 19(2)** of law of limitation Cap 89 provide that in computing time, the time requisite for obtaining copy of decree or order shall be excluded. In support, the case of **ALEX SENKORO AND OTHERS VS ELIAMHUYA LYIMO Civil Appeal No. 16 of 2017** at page 08 to 13.

In reply, Counsel for the Respondent submit that, the reason given by the Applicant hold no water in the circumstance of this case.

The Respondent's Counsel said, the circumstance of the case at hand is that, it is clear that **Civil Case No. 12/2016** between **LIVINUS SAMATO AND BLESS MAKANGANYA V IGNAS ROMWARD MSAGAYA** at District Court of Kilosa before Khamsin RM was delivered on **20/7/2022** and Applicant received the Judgment on **2/11/2022** as stated on paragraph number 6 of the Applicant's Affidavit. Further, the Judgment was received after more than **91 days**, which is unaccounted for. The letter

requesting Judgement, Decree and proceedings was written on **4/8/2017** after the lapse of **15 days** from the date of decision as stated under paragraph number 6 of the Applicant's affidavit.

That after the Applicant being availed with Judgment, he filed **Civil Appeal No. 246/2017** before **Honourable Kulita, J.** who dismissed the suit on **30/5/2019** for being filed out of time. The time lapsed was **8 months**, where the Applicant filed **Misc. Civil Application No. 41/2020** praying for the extension of time to file review which was granted on **20/5/2021**. Further, instead of filing Application for Review, Applicant filed another Application for the extension of time on **16/6/2021** praying again for the extension of time to file an Appeal.

From the above, it is the Respondent's Counsel Submission that the Applicant's action is the abuse of court process. In support, the case of the Applicant action is the abuse of court process. In the case of **REGISTERED TRUSTEES OF KANISA LA PENTEKOSTE MBEYA VS LAMSON SIKAZE, & 4 OTHERS COURT OF APPEAL OF TANZANIA AT MBEYA, CIVIL APPEAL NO. 210 OF 2020 (UNREPORTED ATTACHED HEREIN)** at page 9 and 10 was cited, where it was held that:

".....we are satisfied that it was, for all intents and purposes forum shopping no less than an abuse of court

process. In our view, since riding two horses at the same time was an abuse of the court process, the high court was enjoined to prevent it under section 95 of the civil Procedure Code Cap 33 [R. E. 2019]. The appropriate order was to strike out the application instead of dismissing it."

The Respondent prays before this court the application be dismissed.

Having carefully gone through the chamber summons, affidavit and submission, I find that it is cogent to remind ourselves on the aspect of extension of time. It is the jurisprudence of our jurisdiction that the discretion of granting an extension of time lies within the powers of the Court and that the same has to be judiciously exercised. The same is also granted upon the Applicant presenting the sufficient reasons thereto.

An extension of time has been reiterated by the Court in a series of cases that have laid down the principles to be abided with for the Court to grant the same. In the case of ***PARADISE HOLIDAY RESORT LIMITED VS THEODORE N. LYIMO, CIVIL APPLICATION NO. 435/01 OF 2018*** it was stated that:

"...but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the

degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law sufficient importance such as the illegality of the decision sought to be challenged".

From the application before this Court, I find that the applicant delayed from the Judgment which was delivered on **20/7/2017**. The Applicant wrote a letter to be avail with Copy of Judgment on **4/8/2017**. When the Judgment came Applicant's, hand, he discovers that the Judgment date is different with the date of delivered after making follow up to the **Kilosa District Court**. Further, **on 30/10/2017** he receives the certified copy of Judgment which contain a proper Judgement date, when the **Civil Appeal No. 246/2017** was filed before this Court on **2/11/2017**.

In the premises the court has found that the delay was pointy contributed by court's errors. Under this single reason, for the interest of Justice, the Applicant has succeeded to quench the court that there is good cause for waiting of his certified copies of Judgment and proceedings for the appeal in High Court; hence the Applicant was accompanied by the technical error from obtaining the Judgment from Kilosa District Court.

For exercising its discretionary power this court proceeds to grant the Applicant with the extension of time as sought.

In the upshot **the application is granted to file the extension of time and the Applicant is given twenty-one (21) days from the date of delivery of this ruling to file in court the intended Appeal.**

No order as to costs.

It is so ordered.

Right of Appeal explained.



**L. E. MGONYA
JUDGE
28/3/2023**