

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

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. CIVIL APPLICATION No. 34 OF 2022**

**FIKIRI MOHAMED @ HAMZA ..... APPLICANT**

**VS**

**SHADRACK BALINAGO ..... RESPONDENT**

**RULING**

20/2 & 20/2/2023

**ROBERT, J:-**

The applicant, Fikiri Mohamed @ Hamza, moved this Court under section 14(1) of the Law of Limitation Act, (Cap. 89 R.E. 2019) for extension of time to lodge an appeal against the decision of the Resident Magistrate Court of Mwanza in Civil Case No. 32 of 2021. The application is grounded on the reasons stated in the affidavit sworn by the applicant in support of this application.

At the hearing of this application, the applicant was represented by Ms. Lilian Lyimo, learned counsel whereas on the other side, neither the respondent nor his advocate entered appearance without any notice despite being served. Hearing proceeded ex-parte against the respondent.

Submitting in support of this application, Ms. Lyimo argued that the applicant's delay to file an appeal within the prescribed time was caused by the delay in issuing the copy of judgment. She submitted that, the judgment was delivered on 18/2/2022 and the applicant applied for certified copy of judgment on 24/2/2022 which was supplied on 18/3/2022 without being certified. By that time the prescribed time for lodging an appeal had already lapsed.

She submitted further that, the applicant wrote a letter to the Deputy Registrar requesting for the copy of judgment to be certified on 21/3/2022 but his letter was never replied. Thereafter he filed an application for extension of time on 11/4/2022 through the electronic filing system which was received on 12/4/2022. He maintained that the applicant had been acting promptly and diligently. To support his argument, he cited the case of **Rudolf Temba & Another Vs Zanzbar Insurance Corporation** Civil Application No. 99/2008 (unreported) and **Bulynhulu Gold Mining Vs George Allen Gwabo** Civil Application No. 23/2015 CAT (Unreported).

The question for determination in this application is whether the applicant has managed to demonstrate sufficient cause for the delay to merit granting of this application.

It is not disputed that a copy of judgment is a legal requirement for one to file an appeal to this court. Order **XXXIX** Rule **1** of the **Civil Procedure Code**, Cap. 33 [R.E 2019] provides that:-

*"Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and **the memorandum shall be accompanied by a copy of the decree appealed from and** (unless the Court dispenses therewith) of **the judgment on which it is founded.**"*

There is no dispute that the applicant received uncertified copy of judgment on 18/3/2022 which should have been a date from which the period of limitation is to be computed if the applicant was supplied with a certified copy of judgment. This is because the exclusion of time of obtaining the certified copy of judgment under section 19(2) and (3) of the Law of Limitation Act is automatic and not subject to Court order (See the case of **Bukoba Municipal Council vs New Metro Merchandise**, Civil Appeal No. 374 of 2021, CAT at Bukoba, (unreported).


According to the evidence adduced, counsel for the applicant requested for certified copies of judgment, decree and proceedings in

respect of this matter on 24/2/2022. Unfortunately, a copy of the judgment supplied to the applicant on 18/3/2022 was not certified and his efforts to have it certified has so far proved futile despite his follow up letters to the Resident Magistrate In-charge and the Deputy Registrar. It is, therefore, not clear if the relevant judgment has already been certified but the applicant has been denied access to the certified copy or otherwise. Technically, the applicant cannot be blamed for the alleged delay to file an appeal if the certified copy of judgment has not been supplied to him.

Be as it may, to avoid further delays in the disposal of this matter, this Court allows this application and directs for immediate supply of the certified copy of judgment and decree to the applicant by the Resident Magistrates' Court to enable him to file an appeal to this Court within 14 days from the date of delivery of the copy of this ruling.

It is so ordered.



  
K.N.ROBERT  
JUDGE  
20/2/2023