IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TABORA
AT TABORA

MISC. CIVIL APPLICATION NO 14 OF 2022

(Arising from the High Court at Tabora in DC. Civil Appeal No. 9 of 2019, Original Civil Case No. 03 of the District Court of Tabora.)

DAVID SAMSON BUTEMBA ....APPLICANT

VERSUS

COSTANTINE COSMAS KIHALIYE......................... RESPONDENT

RULING

Date of Last Order: 20/06/2023

Date of Delivery: 20/06/2023

MATUMA, J.

This is an application for extension of time within which David Samson Butemba can file an application for leave to appeal to the Court of Appeal against the decision of this Court in DC. Civil Appeal No. 09 of 2019, Bahati, J.

The application is made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and supported by an affidavit sworn by the applicant himself (David Samson Butemba).

At the hearing of this application only the Applicant was present in person. The respondent was absent despite the fact that he was dully served. The hearing thus proceeded ex-parte.

Submitting in support of this application, the applicant submitted the impugned decision of this court was delivered on 27/08/2021. On

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28/09/2021 he filed an application for extension of time to apply for leave but the same was struck out for having been determined as incompetent for wrong citation. He then brought this application for the same orders so that he is extended time to apply for leave to appeal to the Court of Appeal of Tanzania.

It is obvious that the Applicant through his oral submission did not account for the delay. What he did was just to explain the historical background of the matter between him and the respondent. He only argued that this Court should grant his application because the respondent has not replied nor objected to this application which signifies that he has conceded to this application.

In the circumstances I have decided to revisit the records at hand including the affidavit of the applicant to see whether or not sufficient cause has been established by the applicant to warrant this Court exercise its discretion to grant the extension of time as sought.

The records at hand shows that the first application (Misc. Civil Application No. 22 of 2021) was struck out on 10th August 2022. This application was then filed on 8th September, 2022 which is almost a month from the date when the first application was struck out.

It is a settled principle that whoever applies for extension of time must account for each day of the delay. See; *Lyamuya Construction Co. Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 Of 2010.*

Assuming that everything was equal as if the Applicant took all reasonable steps against the impugned judgment which was delivered on 27/08/2021 by filing the requisite notice of appeal and by filing the

first appeal which was struck out, the Applicant is still owing a duty to account for the 29 days which lapsed between the date of the dismissal of the first application and the date when the instant application was made. Unfortunately, the applicant's affidavit is silent about those days, and the applicant at the hearing of this application did not even attempt to account for them. It thus goes without saying; that the applicant has not accounted for the twenty-nine (29) and therefore the conclusion is that he was reluctant to take the requisite actions immediately after the struck out of the first application. As a matter of law, his application cannot be granted.

I therefore find that this application has been brought without any sufficient cause and I accordingly dismiss it. Since the Respondent did not enter appearance I order no costs to either party. Whoever aggrieved by this ruling has the right to take further steps to the Court of Appeal of Tanzania. It is so ordered.

MATUMA

JUDGE

20/06/2023

ORDER

Ruling deliver in the presence of the Applicant in person and in the absence of the respondent. Right of Appeal explained.

MATUMA

JUDGE

20/06/2023