

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MANYARA SUB REGISTRY

AT MANYARA

MISC. CIVIL APPLICATION NO. 1 OF 2023

(Arising from Civil Case No. 2 of 2022 of Mbulu District Court)

CHRISTINA JOSEPH.....APPLICANT

V

MAGANGA TLUWAY.....1<sup>ST</sup> RESPONDENT

EMANUEL HHAWAY.....2<sup>ND</sup> RESPONDENT

Date: 14/3/2023 & 14/3/2023

**BARTHY, J**

**RULING**

The applicant by way of chamber summons moved this court under section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019 and section 95 of the Civil Procedure Code Cap 33 R.E. 2019 on the following orders;

- 1. That, this honourable court be pleased to grant extension of time to allow the applicant to file an appeal out of time against Civil Case No. 2 of 2022 of Mbulu District Court.*
- 2. Costs be provided for.*
- 3. Any other necessary orders this honourable court may deem fit and just to grant.*

The application was supported by the affidavit deposed by the applicant herself stating that she was sued with the first respondent as the first



defendant together with the second respondent herein Civil Case No. 2 of 2022 before Mbulu district court.

The said matter was determined by settlement deed on 19/9/2022 in her absence as she was never summoned to appear. It was until the plaintiff, now the first respondent when she applied to execute the decree of the court on the said matter when she became aware of the matter.

The applicant thus filed this matter for extension of time to file her appeal out of time.

On the date fixed for hearing the applicant enjoyed the services of Mr. Paul G. Eugen and both respondents were represented by Mr. Omary Gyunda assisted with Mr. Basil Bohali.

The counsel for the respondents did not contest the application and prayed for the same to be granted without costs.

Having considered that the application is not contested, this court has to determine as to whether the application has the merit.

Granting the extension of time to file the appeal out of time is in the discretion of the court. It is however an established principle that, for the court to give an extension of time, the party must give sufficient reasons to account for his delay and the respondent will not be



prejudiced if the time will be extended; see the case of **Mbogo v. Shah** (1969) EA 93.

As to what constitute sufficient reason, cannot be laid down by any hard or fast rule. It must be determined by reference to all circumstances for each case.

In the present matter the applicant's sufficient reason was that, the civil case No. 2 of 2022 of Mbulu district court was heard and determined in her absence; as she was never served to appear before the trial court.

It was until the application for the execution of the court's decree which was transferred to Manyoni district court vide civil case No. 15 of 2022, when she came to learn over the existence of the said case.

The appellant stated that it was until 8/11/2022 when she came to know about the execution application matter before Manyoni district court. Therefore, she had to travel to Mbulu district court where she was supplied with the copies of three matters decided against her in her absence, related to same parties.

The applicant was supplied with the last copy of judgment on 23/12/2022. The applicant promptly filed the application for extension of time to be granted leave to file her appeal out of time.



The applicant is required to account for each day of delay, as emphasized in the case of **Tanzania Fish Processors Limited v Eusto K Ntagalinda**, Civil Application No. 41/08 of 2018, CAT at Mwanza and **Dar es Salam City Council v. Group Security Co. Ltd**, Civil Application No 234 of 2015, CAT at DSM (both unreported).

In the upshot, I find that the applicant has sufficient good reasons to be granted her application as she was able to account for each day of her delay for this court to consider her application. The application has the merit and the applicant is granted the extension of 14 days to file her appeal out of time from today.

It is so ordered.

**DATED at Babati** this 14<sup>th</sup> March, 2023.



  
**G.N. BARTHY**

**JUDGE**

**14/3/2023**

Delivered in the presence of Mr. Paul Eugen for the applicant, Mr. Omary Gyunda assisted with Mr. Basil Bahai for the respondents and the parties in person.