

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA SUB REGISTRY  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 18 OF 2023**

(C/F Civil Case No 20/2021 in the Resident Magistrates Court of Arusha)

**THEMI INVESTMENT (T) LIMITED .....1<sup>ST</sup> APPLICANT**  
**JOSEPH RAPHAEL LYIMO .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SINGWA BENJAMIN KHALE ..... RESPONDENT**

**RULING**

12<sup>th</sup> September & 31<sup>st</sup> October, 2023

**KAMUZORA, J.**

The applicants herein intending to file an appeal before this court against the decision of the Resident Magistrates Court of Arusha in Civil case No 20 of 2021 that was delivered on 29/08/2022. Being out of time, the applicants have preferred this application under the provisions of section 14 (1) of the Law of Limitations Act, Cap 89 R.E 2019. The application is supported by an affidavit of Benjamin Oscar Temi, and strongly opposed by the respondent through the counter affidavit of the Respondent herein.

In course of assessing the pleadings in this application I discovered that there are two applicants the first being a company and the second being individual person. However, only one affidavit was deponed by Benjamin Oscar Temi, in the capacity of a director without indication if his directorship was extended to the 2<sup>nd</sup> applicant who is an individual person. The contents of the affidavit reveal that only the first applicant was referred hence no affidavit on behalf of the 2<sup>nd</sup> applicant. That in my view, is procedural irregularity which could have rendered the application incompetent. However, since the incompetency touches the 2<sup>nd</sup> applicant only and in considering the totality of the matter, I see no reason to struck out the application. I will therefore proceed on determining the merit of this application.

Hearing of this application proceeded by way of written submissions and both parties complied to the submission schedule. The Applicants submission was drafted by the learned counsel Mr. John Nicholous Mseu while Ms. Ikonda O. Kazzy, learned advocate drafted and filed the reply submission on behalf of the respondent.

Reading the affidavit in support of application, the reasons for delay as advanced by the Applicants is that there was delay in supplying copies of Judgment by the trial court. It was also deponed that the

judgment was delivered in the applicant's absence and despite making various follow up before the trial court, the Applicants were not issued with the certified copies of judgment and decree for appeal purpose. That, after being supplied with the said decision, they discovered some legal matters that needs the interference of this court. it was deponed that the lower court omitted the third party principle by imposing liability solely to the applicants while they have insurance cover with the third party.

It is imperative to note that, for an application of this nature to succeed, the applicant must advance good/sufficient grounds convincing the Court to exercise its discretionary powers in granting extension of time. Although good cause cannot be laid down by hard and fast rules nevertheless, the same depends on the circumstances of each individual case.

In the application at hand the applicants' counsel submitted that the decision of the trial court was pronounced in the absence of the Applicants on 29/08/2022. That, they were not notified on the judgment date. That, they made follow up before the trial court for copies of judgment and decree and the same was supplied to them on 25/02/2023. That, upon reading the said judgment the applicant noted

legal issue on the insurance contract which the applicants had with the third party as the same was not discussed by the trial court and instead the applicants were ordered to pay the respondent despite having an insurance cover. The applicants counsel insisted that, the Applicants could not have appealed before this court to challenge that decision before being supplied with copies of judgment and decree. The Applicants' counsel referred the case of **Michael Lesani Vs. John Aliafya** [1997] TLR that states that the court can grant extension of time if sufficient cause has been shown. He therefore prays for the Applicants' application to be granted.

The respondent contested the application and challenged the submission by the Applicants' counsel. the respondent's counsel submitted that, the Applicants were aware of the date of judgment and appeared through the service of Advocate Valentine Nyalu. That, there is no tangible evidence from the Applicant or any correspondence showing the effort made by the applicants seeking to be supplied with the copies of judgment and decree. He added that it is the Applicants' duty together with their advocate to make follow up of the copies and not to wait for the court to call them to collect the same.

Regarding the issue of omission of the third party, the respondent stated that the said issue could be dealt with at the appellate stage and not in this application. The respondent finalised by stating that the reasons advanced by the Applicants are not sufficient to grant the order sought.

From pleadings and parties' submissions, the crucial issue to be determined by this court is whether the reasons for delay advanced by the applicant amounts to sufficient cause to warrant this court extend time to lodge an appeal before this court.

The law under section 19(2) and (3) of Law of Limitation Act, [Cap. 89 R.E 2019] provides automatic exclusion of the period of time spent for obtaining a copy of judgment/ruling or decree or order sought to be challenged. This was also the position of the Court of Appeal in **Alex Senkoro and 3 Others Vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased), Civil Appeal No. 16 of 2017** (CAT- unreported) where it was held:

*"We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time."*

Based on the above authority, the period spent in obtaining copies of judgment and decree can be excluded while computing the time to lodge an appeal before this court. But for one to succeed on this point, demonstrate with evidence the effort done and the time he was availed with the same. In other words, it was expected for the Applicant to attach the impugned decision of the trial court or a hand over document indicating the date they were issued with such decision. It is unfortunate that in this application the applicants only deponed that the delay was attributed by the delayed in being supplied with copies of judgment and decree. No any document that was attached to the affidavit showing the date to when the applicants were supplied with the copies of the said judgment and decree. The affidavit being the only evidence to prove application of this nature, it was expected to contain all important facts proving the delay. In the case of **Registered Trustees of the Archdioces of Dar es Salaam Vs. The Chairman of Bunju Village Government & 4 others**, Civil Appeal No. 147 of 2006 CAT (unreported), it was held that,

*"An affidavit is evidence we think it was expected that reasons for the delay would be reflected in the affidavit. In the absence of reasons, it occurs to us that there was no material evidence upon*

*which the judge could determine on merit the application before him..."*


In absence of clear evidence in the Applicants' affidavit, it cannot be said that the applicants have advances sufficient reasons to warrant this court to grant the order sought.

Regarding the argument that there existed legal matters that needs the attention of this court, this court finds the respondent's submission relevant. To me, such legal issue could be a point of determination on appeal and not in an application for extension of time. What need to be established here is that there was good reason for the applicants' failure to prefer an appeal on statutory prescribed time.

In the upshot, I find that the Applicants were unable to demonstrate that there were good reasons for the delay. Delay in obtaining copies of judgment and decree in the circumstance of this case was not proved to justify time enlargement. I therefore find no merit in this application and the same is hereby dismissed with costs.

**DATED at ARUSHA** this 31<sup>st</sup> October, 2023.



  
**D.C. KAMUZORA**  
**JUDGE**