

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
KIGOMA SUB-REGISTRY
AT KIGOMA

DC. CIVIL APPEAL NO. 05 OF 2023

ESTER RAPHAELAPPEL
VERSUS

SAMSON LUKAS.....RESI

(Arising from the decision of the District Court of Kigoma)

(Mushi, RM)

Dated 23th March 2023
in

Misc. Civil Application No. 09 of 2022

JUDGEMENT

3rd & 31st October 2023

Rwizile, J

This appeal arises from the decision of the district court, which denied the appellant an extension of time to file her appeal in the district court. When considering her application, the court was satisfied that the delay was caused by the appellant and that there was no illegality proved to be in existence.

This court is therefore asked to set the decision of the Court in three fours that there was sufficient cause for the delay which was accounted for and that illegality was shown. Mr. Moses Rwegoshara learned advocate appearing for the appellant argued that the application was filed one day out of time. He said, the application was filed on 13th September 2022 and paid for it on 15th as shown in the supplementary affidavit.

He asked this court to allow this appeal. On the other side, the respondent who stood unrepresented prayed the decision of the District Court be confirmed.

Granting or rejecting an application for extension of time is in the absolute discretion of the court. However, such discretion has to be exercised along the principles consistently applied by courts in case laws. In the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010. The court laid down principles to apply when granting or refusing an extension of time. It was held that: -

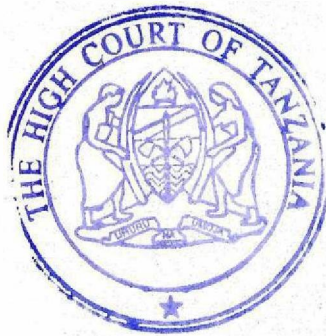
- i. The delay should not be inordinate*
- ii. The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged*

I note that although this case was cited before it, the district court did not consider the same. It dwelt on whether or not illegality was proved. The reasons that were advanced by the appellant before the district court was that she delayed for days because she was looking for legal assistance.

I think the trial court was hard on the appellant. A delay of justice of a few days, in this case not exceeding three should not be taken as to have been excessive. I believe the time she spent looking for legal assistance was

justifiable and therefore the court ought to have found it proper to extend the time for her to file her appeal.

Having said, what I have said, I allow this appeal, I set aside the ruling of the district court. The appellant is given 14 days from the day of this ruling to file her appeal before the same court.




ACK. RWIZILE
JUDGE
31.10.2023