

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. CIVIL APPLICATION NO. 53 OF 2022

1. ALOYCE ZAMOYONI.....1ST APPLICANT

2. MATESO MAGANGA.....2ND APPLICANT

VERSUS

HABELI NDAHANI.....RESPONDENT

(Arising from the High Court of Tanzania at Dodoma)

In

DC Civil Appeal No. 15 of 2020

.....

RULING

Date of Last Order: 27th October, 2023

Date of Ruling: 31st October, 2023

SARWATT, J:.

Before this Court is an application for an extension of time for the Applicants to file leave to appeal to the Court of Appeal, the applicants, Aloyce Zamoyoni and Mateso Maganga, brought it by the chamber summons and supporting affidavit under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 (R.E 2019) hereinafter referred to as the Act. The application was preferred against one Habeli Nadhani, the respondent. The applicants also pray for the application costs and any other reliefs that this Court will deem fit and just to grant.

In the affidavit, the Applicants deposed that having won the criminal case against the respondent at the Primary Court of Makang'wa, they instituted the Civil Case No. 19/2018 at Dodoma District Court claiming for malicious prosecution whereby the cases ended in the respondent's favour. The Applicants also averred that, following that decision by the District Court, they appealed to this Court through Civil Appeal No. 15/2020, in which they also lost the case, hence their intention to appeal to the Court of Appeal.

It is their further averment that they timely filed a Notice of Appeal to the Court of Appeal. However, they did not manage to apply for leave to appeal to the Court of Appeal for the reason that the copies of the judgment and the decree were not supplied to them within time.

In the counter affidavit, the respondent vehemently opposed the application, disputing all the averments made on the affidavit.

When the parties were invited for a hearing, both parties were represented. The Applicants engaged the services of Mr. Lucas Komba whereas Ms. Joanitha Paul appeared for the respondent.

In his submission, Mr. Lucas Komba adopted the supporting affidavit. He reiterated that they had failed to file the application for leave to appeal for reasons beyond their control, as stated in the affidavit.

On her part, the Respondent Counsel submitted against the application that the failure of the Applicants to make a follow-up of the Court's record is the cause of delay. Thus, they have no right to ask for an extension of time under the circumstances.

She added that the reasons advanced in the application are not sufficient enough for this Court to grant it. To bolster her assertions, she cited the case of **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (H.C. Arusha) (unreported).

In ascertaining whether or not this application has merit, I have carefully reviewed the case record alongside the applicants' affidavit, counter affidavit, and the learned counsel's submissions. From the records, it is clear that the judgment of this Court in Civil Appeal No.15 of 2022 was delivered on 24/6/2022, and the decree thereof was extracted on the same day.

Also, through the applicants' affidavit, certainly, annexure A3, which is the letter by the Applicants to the Deputy Registrar requesting to be supplied with the proceedings and judgment of this Court, was written on 6/7/2022 and the same was accordingly received by the Court. However, it is neither stated in the Applicants' affidavit nor in the submission made

by their counsel in support of the application as to the exact date when the applicants were supplied with the said records of the Court.

It is trite law that for an application for an extension of time to be granted, a Court should consider, among other factors, the reasons for the delay in each single day. This position has been enshrined by the Court of Appeal and this Court on several occasions. See the case of **Ramadhani J. Kihwani vs. TAZARA**, Civil 2 Application No. 401/18 of 2018, Court of Appeal, Dar es salaam (Unreported); **Bahati M. Ngowi vs Paul Aidan Ulungi**, Misc. Application No. 490/13 of 2020 Court of Appeal, Songea (Unreported); and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported-Court of Appeal). For instance, in **Bushiri Hassan**, it was held that;

"Delay of even the single day has to be accounted for otherwise there will be no point of having rules prescribing periods within which certain steps have to be taken."

Considering the above-stated position of the law and the failure of the Applicants to state the date on which they had obtained the Court's record to justify their delay, I find that the applicants have failed to account for each day of delay and, therefore, I see no reason to agree with their contention. It is an elementary principle that he who alleges is

responsible for proving. In the instant case, the applicants have such duty to prove to the Court that their delay in filing the intended application for leave to appeal to the Court of Appeal was not occasioned by them.

In view of the foregoing discussions, it is my finding that this application lacks merit and is hereby dismissed in its entirety with costs.

Ordered accordingly.



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S. S. SARWATT

JUDGE

31/10/2023

DATED at **DODOMA** this 31st day of October, 2023



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S. S. SARWATT

JUDGE

31/10/2023