

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

**MISC. CIVIL APPLICATION NO. 48 OF 2022**

*(From Civil Appeal No. 10 of 2021 High Court of Tanzania at Mwanza, Hon F. Manyanda, J dated 15/3/2022 originating from the Court of Resident Magistrate of Mwanza in Civil Case No. 66 of 2019)*

**JOSEPH MAGESA CHILAYE .....APPLICANT**

**VERSUS**

**ACCESS BANK TANZANIA LTD .....RESPONDENT**

**RULING**

*8<sup>th</sup> December, 2022 & 15<sup>th</sup> February, 2023*

**ITEMBA, J.**

The applicant herein is seeking for enlargement of time to file notice of appeal under sections 11 of the Appellate Jurisdiction Act and section 95 of the Civil Procedure Code.

The application was determined by way of writing following a prayer by the applicant and upon consensus by both parties. According to the applicant's affidavit and his submissions, the grounds advanced for extension of time are that he received a copy of the impugned judgment when he was already out of time to file a notice of appeal. He explains that, after the appeal was heard, the appellate Judge was transferred from Mwanza to a different station. That, the impugned judgment was delivered later on 15.3.2022 via video conference and the applicant was not satisfied therefore he informed the court clerk on his need for a copy

of judgment but he was told to make follow ups. He added that, the said judgement had typing errors as it reflected **Civil Case No. 69/2019** instead of **No. 66/2019** and cost to be borne by the appellant instead of respondent. Thus, there was a need for rectification, he stated. The applicant submitted further that on 25/03/2022, he wrote a letter to the Deputy Registrar to request the copy of judgment (Annexure '**JMC A**') and another letter on 25.4.2022, (Annexure **JMC B**) and he was finally supplied with a copy of Judgment, decree and proceedings on 20/5/2022 annexure "**JMC C**" which was a Friday. That, on Monday the 23/5/2022, he sought Legal advice and he was advised to file this application before filing a notice of appeal.

The respondents, were represented by Mr. Patrick Kinyerero Advocate. In his counter affidavit and submissions, he opposed the application. He agreed to the fact that the Hon. Judge was transferred to a different station and once the judgment was issued, there was a need for rectification. However, he objects the application because having a copy of Judgment is not a condition precedent of lodging a notice of appeal.

The respondent is relying on the decision in **Kassim Mahonya v Benedict Joseph Njau** Civil Appeal 176 Of 2019 CAT (Dar es salaam) and Rule 83(5) of the Court of Appeal Rules, 2009 which states:

*(5) Where it is intended to appeal against a judgment or decision of the High Court, it shall not be necessary for a copy of the judgment or decision to accompany the notice of appeal.*

The respondent finally prayed for the application to be dismissed with costs.

The applicant maintained his submission in his rejoinder. He argued that indeed the copy of Judgment was not a necessary document in order to file appeal but there was no proper judgment as a proper judgment should be free of errors.

It is trite law that the applicant must show sufficient cause for the court to issue extension of time. In the celebrated case of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported). The Court of Appeal of Tanzania described key conditions upon which grant of extension of time should be based, and these conditions are as follows:

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.*

*d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.'*

Based on both parties' submissions, the issue here is whether the applicant has shown a good cause for an extension of time to file appeal to be granted. As hinted above, the main reason given by the applicant is the delay in issuance of a copy of judgment and typing errors in the said judgment. If I can go straight to my findings, I totally agree with the respondent's submission and the cited case of **Kassim Mahonya v Benedict Joseph Njau** Civil Appeal no. 176 of 2019 that there was no need for the applicant to wait for the copy of judgment to file appeal because it was not necessary for the copy of judgment to accompany the notice of appeal. This is found under rule 83(5) of Court of Appeal Rules which is quoted above.

It was important for the applicant to secure his position at the Court of Appeal registry, by filing a notice of appeal (which does not require substantive details) and if there are other grounds about his complains, then he could explain them in the memorandum of appeal later on. Therefore, the reason given is neither sufficient nor maintainable in law.

Besides, I have gone through the two letters written by the applicant to the Deputy Registrar annexure **JMC A** and **JMC B** in both letters, the applicant was requesting the copies of judgment, decree and exhibits so that he can re-open the case as directed in the said judgment. Part of the letter marked **JMC A** says:

*'Kwa vile shauri hilo linatakiwa kuanza upya mbele ya mahakama ya mwanzo, ninaomba nipewe nakala ya hukumu na Tuzo na Nyaraka vielelezo vilivyotolewa nami mbele ya mahakama iliyosikiliza shauri hilo, ili viniwezeshe kufungua shauri upya Mbele ya Mahakama ya Mwanzo kama ilivyoelekezwa na Mahakama Kuu.....'*

The second letter marked JMC B also had almost similar contents as follows:

*'Tokana na hukumu hiyo naomba nipewe Vielelezo nilivyotoa katika shauri hilo, ili nifungue upya shauri hilo mbele ya Mahakama ya mwanzo mjini Mwanza.'*

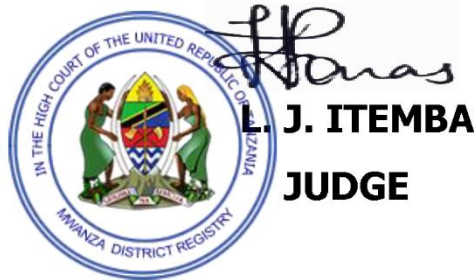
It appears therefore, the need for the copy of judgment was not even for preparing the notice of appeal as claimed. Hence, even the applicant's grounds for delay are not supported by his own submissions.

As a result, I do not find any sufficient reason to warrant an extension of time to file a notice of appeal, as applied for by Joseph M. Chilaye.

The application is hereby dismissed with costs.

It is so ordered.

**DATED at MWANZA** this 15<sup>th</sup> day of February, 2023.



Ruling delivered under my hand and seal of the court in chambers,  
in the presence of the applicant in person, Mr. Patrick Kinyerero, counsel  
for the respondent and Ms. G. Mnjari, RMA.

A handwritten signature in blue ink, appearing to be 'L. J. Itemba', written on a light background.

**L. J. ITEMBA  
JUDGE  
15.02.2023**