

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**TABORA SUB REGISTRY**

**AT TABORA**

**MISC. CIVIL CAUSE NO. 27339 OF 2023**

*(Arising from Misc. Civil Cause No. 1 of 2023 before the High Court of United Republic of Tanzania, Tabora sub-registry at Tabora)*

**EX E2070 NYAMWEKO BOMANI..... APPLICANT**

**VERSUS**

**ATTORNEY GENERAL.....RESPONDENT**

**RULING**

*Last Order date: 06/03/2024*

*Ruling date: 06/06/2024*

**MANGO, J**

The Applicant seeks extension of time to file a notice of appeal to the Court of Appeal of Tanzania against the decision of this Court in Misc. Civil Cause No. 1 of 2023. The application is by way of Chamber Summons made under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E 2019], supported by an affidavit sworn by the Applicant. The Respondent contested the grant of the application and he filed a counter affidavit sworn by Gureni

Nzinyangwa Mapande, a State Attorney working in the office of Solicitor General assigned to prosecute this application.

During hearing the Applicant was represented by Samwel Ndanga learned advocate while the Respondent enjoyed legal services of Samwel Mahuma, learned State attorney. The Applicant's counsel adopted the contents of the affidavit filed in support of this application to form part of his submission.

He then submitted on the two grounds advanced by the Applicant in his attempt to account for his delay to lodge notice of appeal. He first submitted on the *alleged* loss of contact between the Applicant and his previous advocate due to loss of the Applicant's phone. In this he submitted that, the Applicant lost his phone on 18<sup>th</sup> December 2022 the loss which caused miscommunication between the Applicant and his advocate. The Applicant was informed of the dismissal of Misc. Civil Cause No.1 of 2023 on 29<sup>th</sup> November 2023 after thorough follow up.

He also submitted that the intended appeal has great chances of success though he did not explain how. To cement his argument he cited the case of **Mohamed Enterprises Vs Musa Shabani Chekechea** Misc. Civil Application No. 21 of 2017 High Court of Tanzania at Tabora.

In his reply submission Mr. Mahuma, adopted the contents of the counter affidavit filed by the Respondents to form part of his submission. He challenged the two reasons advanced by the Applicant in accounting for his delay to file notice of appeal for being not sufficient to move the Court to grant extension of time to the Applicant.

On the alleged overwhelming chances of success, he argued that, the Applicant did not mention the alleged chances of success of his intended appeal. He added that, the Applicant affidavit lacks facts that substantiate the alleged chances of success to the intended appeal. According to the learned State Attorney nothing is contained in the Applicant's affidavit and submission that give a clue of the alleged chances of success of the intended appeal.

On the alleged loss of contact between the Applicant and his advocate, he argued that, the Applicant did not act diligently because the case subject of this application was filed in the year 2023 while the Applicant alleged to have lost his phone on 18/10/2022. Thus, by the time the phone got lost, the matter subject to this application was not yet filed before the Court. He argued further that, even if it will be assumed that the phone got lost in 2022, there is no any evidence that establishes so. He is of the view that, it cannot be considered that the applicant acted diligently while there is no evidence establishing the alleged loss of the phone and efforts by the Applicant to make follow up of his case.

He is of the opinion that, the applicant has not managed to account for his delay to file this application. He cited the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011) in which the Court of appeal held that, for an application for extension of time to be granted, the Applicant should account for the entire delay with a sufficient cause. He concluded that, the Applicant did not

and grant extension of time merely because the Applicant stated that his intended appeal has great chances of success.

For those reasons the application is dismissed. Given the need to ensure litigations are finalized, I do not award costs.

Dated at Tabora on this 6<sup>th</sup> June 2024



A handwritten signature in blue ink, appearing to read "Z.D. Mango", written over a set of horizontal dashed lines.

**Z.D.MANGO**

**JUDGE**