

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM SUB-REGISTRY**

MISC. CIVIL APPLICATION No 7124 /2024

CASE REF NO 202404031000007124

(Originating from the decision in Civil Appeal No.118/2021
Dated 9th June 2023 Hon. Mruma; J)

SADARBIBI MOHAMED HAJI -----APPLICANT

VERSUS

ZULFIKAR MOHAMED HAJI -----1ST RESPONDENT

SHARIFA ZAM----- 2ND RESPONDENT

RULING

13 & 14th June 2024.

KIREKIANO J:

The applicant Sadarbibi Mohammed and the first respondent Zulfikar Mohammed Haji are litigating a dispute involving the administration of the estate of their late father, Mohammed Sarfraz Haji. Before this court, there was civil appeal no. 118 of 2021 originating from Kinondoni District Court in Probate Appeal No. 5 of 2021. This court decided that the 2nd respondent failed to prove the Will dated 23.2.2015.

This court quashed the District Court's judgement and declared the will invalid, and directed that the appointed administrators, who are the applicant and the 1st respondent, administer the deceased's estate according to Islamic law, file an inventory and final account, and close the

administration according to the law. This decision was delivered on June 9, 2023.

The applicant is dissatisfied with this decision and wishes to appeal to the Court of Appeal. Since she is out of time, she has filed this application under Rule 8 of the Court of Appeal Rules of 2009 and Section 11 of the Appellate Jurisdictions Act, Cap. 141 R.E 2019, praying for the following orders;

- 1. This Court be pleased to grant the Applicant leave to lodge a notice of appeal out of time against the Judgment of the High Court of Tanzania in Civil Appeal No. 118 of 2021 delivered on the 09th day of June 2023 and serve the Respondent.*
- 2. Costs be provided for.*
- 3. Any other and further Orders as this Court shall deem proper in the circumstances.*

The applicant's reason for the delay is stated in her affidavit significantly that she did not know the existence of the judgment until the 06th day of December 2023, when she noticed that the judgment was delivered on the 09th day of June 2023. From this date (06th day of December 2023), when she became aware that the decision was rendered in June, she was not supplied with a copy to know the contents until the 20th day of March 2024. The appellant lodged this application for an extension of time on 2.4.2024. As such, in paragraph 13, she pointed to a

legal issue that this court went beyond the scope of appeal by ruling that the deceased's estate be divided according to Islamic laws.

The application was not contested by the 1st respondent. The second respondent contested the application and filed a counter affidavit disputing the applicant's deposition. It is the second respondent's deposition that the applicant has not accounted for delay, including (15) days of delay from the date the applicant received the copy of the judgment on 20/03/2024 to the date of filing this application.

In her rejoinder, the applicant stated that she was unaware of the content of the judgment due to her absence on the date of judgment. Hence, she could not appeal or lodge a notice. Against the decision she was not aware of.

When this application was placed before me for hearing, it was heard by way of written submissions, which were timely filed. The applicant had the services of Mr Idi Musa Msawanga, and the second respondent had the services of Dr Sigbert Ngemera, a learned advocate.

It is common ground that refusing or granting this kind of application is the court's discretion; I have considered the decisions cited by the parties but also other decisions; **Benedict Mumelo v Bank of Tanzania, Civil Appeal No. 12 of 2012**, and **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)**

The principle in these decisions is that the discretion to grant or refuse the application has to be done judiciously; thus, an extension of time may only be given where it has been sufficiently established that the delay was with sufficient cause.

The parties' point of departure is whether the applicant has advanced good cause or sufficient reasons to warrant granting an extension of time.

In his submission, the applicant's counsel argued that the failure of this court to inform the parties on the date of judgment was an error beyond the applicant's control. Thus, a party cannot be penalised for the mistake committed by the Court. In support of his argument, he cited **African Estate Ltd Vs District Commissioner for Lindi District, and 2 Others, Civil Application No. 12/07 Of 2022**, citing the case of **Tanzania Revenue Authority Vs in approval. Tango Transport Company Ltd, civil application no. 5 of 2006.**

On his part, Dr Ngemera, the second respondent, submitted that the applicant's deposition in the affidavit shifted the blame for his sloppiness and inaction to the court without demonstrating the diligence done on his part. According to him the applicant should have asked the court to leave

or peruse the record to know the date of judgment. Mr Ngemera contended that the applicant did not meet the test elucidated in the case of **Lyamuya Construction**, that is to say, the exercise of diligence, accounting for all periods of delay, and the delay should not be inordinate.

Responding to the applicant's point of illegality indicated in paragraphs 10 to 13 of the applicant's affidavit, he argued that illegality must be apparent on the face of record as stated in **Transport Equipment Ltd and Another vs Devram P. Valambia (Civil Application 19 of 1993) [1993]** TZCA 42 (12 May 1993)

I will start with the length of the delay. According to the affidavit, the decision was rendered on 9th June 2023. The applicant had thirty days to file her notice of appeal; thus, she must account for each day of delay. I have examined the parties' affidavits. It is also common ground that the parties were not present when the decision was delivered. In this regard, I consider the period from 9 June 2023 till 6.12.2023, when she knew the judgment was rendered, as accounted for in those circumstances.

In the second place, there is another deposition that even after knowing that the decision was rendered, the applicant did not know about the contents of the judgment until 20.3.2024. I have examined the applicant's affidavit, and it is clear from the annexure that the applicant made an effort to know about the judgment and was not supplied with a

copy in time. This is according to letters dated 23/3/2023, 7/12/2023, and 13/3/ 2024.

I have considered the applicant's correspondence with the registry as an exercise of diligence, and having considered the same, I am settled that the applicant accounted for days of delay from 6.12.2023 until 20.3.2024 until the applicant was supplied with a copy filed this application.

Lastly, I have considered 15 days, from 20.3.2024 until the application was filed on 2.4.2024, and the circumstances surrounding the delay. The applicant was not to blame for the substantial delay period. I agree with the applicant's counsel that the applicant should not take the blame for the delay, which was beyond her control. Regarding 15 days from 20.3.2024 till 2.4.2024 when she filed this application. I believe the same was not inordinate and could have been used to prepare the documents. To put it differently, this is within the period within which the law intended to give a part to take necessary action. ,My view is also fortified by the decision of this court in **Damari Watson Bijinja v Innocent Sangano, Civil Application no. 30 of 2021**, whereby my brother Manyanda J. Has this to say;

"In the instant application, though the applicant had all the documents as argued by the counsel for the respondent, he

still needed time to prepare and file the application in Court. I find that the circumstances of this matter, the period of 12 days, were reasonable for the applicant to prepare the application.

Concerning the issue of illegality, in the decision at issue, the principle is, as stated in the cited **case of Valambia**, that not every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time. This means that illegality has to be claimed by an applicant in his affidavit; it has to be apparent on the face of the record without the need for a long argument or process, and it has to be a point of law of sufficient importance. Looking at the application affidavit, I have not seen an error apparent on the face of the record.

In the end, I find that the applicant has appealed the days of delay, and the delay is not inordinate. All factors considered; this court grants the application with the direction that the applicant should file her notice within 14 days of this ruling. This matter stems from probate proceedings; there will be no order regarding cost.



A. J. KIREKIANO
JUDGE
14.06.2024

COURT

Ruling delivered in the chamber in the presence of the applicant, and 1st and 2nd respondent, and in the presence of counsels for the applicant and 2nd respondent.



A. J. KIREKIANO
JUDGE
14.06.2024