

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB-REGISTRY)

AT KIGOMA

MISCELLANEOUS CIVIL APPLICATION NO. 5 OF 2023

(Arising from Civil Appeal No. 13 of 2023 of the District Court of Kasulu at Kasulu)

GELION ISAYA APPLICANT

VERSUS

GETRUDA DANIEL NSUBILE RESPONDENT

RULING

Date: 15/05 & 27/06/2024

NKWABI, J.:

The applicant had his appeal dismissed with costs by the district court on 27/03/2023. On 21st April 2023 he submitted a letter in the district court requesting the district court to supply him with a copy of the judgment, which he had made follow up for four times without being supplied with one. It was on 27/04/2023 when he got hold of the copy of the judgment. At that time, he would not be able to file an appeal within the legally prescribed time under section 25 (1) (b) of the Magistrates' Courts Act. It is for that ground he filed this application for extension of time. He is also alleging an illegality in the decision of the district court.

The chamber summons is based on section 25(1) (b) of the Magistrates' Courts Act, Cap. 11 R. E. 2019 and any other enabling provisions of the laws. The chamber summons is supported by the affidavit of the applicant.

The respondent resisted this application. She filed a counter affidavit in which she avowed that the applicant was supplied with the copy of the judgment on 27/03/2023, so the applicant was negligent. She also disputed any illegalities in respect of jurisdiction of the trial court (the primary court). The respondent prayed the application be dismissed with costs.

The application was disposed of by way of oral submissions. Both parties appeared in person, unrepresented. The applicant insisted that he was delayed to lodge the appeal due to delay in being supplied with the copy of the judgment of the district court. The respondent only prayed her counter affidavit be adopted as her submission and she had nothing to add.

I have closely considered the stand points of each party to this application. First of all, the applicant, in the background is alleging to have accounted for each day of the delay by claiming a technical delay of which he is not the author on the ground that he was not timely supplied with the necessary copy of the judgment of the district court. The respondent is saying that the applicant was supplied with the necessary copy on the

very day the judgment was delivered. I do not accept the stance of the respondent. The copy of the hand over document attached by the applicant bears clearly that that copy of the judgment was handed over to the applicant on 27/04/2023 while the date indicated as 27/03/2023 appears to me to indicate the date the judgment was delivered by the district court.

The affidavit in support of the application bears him that it was prepared on 01/05/2023 only three days after he was supplied with the copy of the judgment. That clearly indicates promptness on the party of the applicant.

Thereafter he took only 7 days to lodge the application in this Court. I take judicial notice (as taken by the Court of Appeal in **Hatibu Gandhi v. Republic** [1996] T.L.R. 12.) that there is a considerable distance from Kasulu to where the High Court, Kigoma Sub-registry is situated, thus requiring the applicant some amount of money for fare (to and from) and who knows tea and or lunch. Even if that would be taken to be a delay by the respondent, the delay is not inordinate as envisaged by **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT (unreported). The applicant is supported

too by the decision in **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 where it was stated:

*"In the instant case, it is common ground that the respondent applied for copies of the proceedings and judgment on 6.1.1999 which was just about 14 working days of the date of the decision intended to be appealed against. It is also common ground that the respondent was supplied with the same on 8.12.1999 after a reminder and filed the application on 16.12.1998. In our view, applying for copies of proceedings and judgment within such a short time from the date of judgment, and later making a follow up by way of reminder, **and finally lodging the application immediately after being supplied with the same**, depicts diligence on the respondent. "[emphasis mine].*


Finally, I am of the firm view that this application is merited. Inevitably, I allow the application. Time for lodging the intended appeal is extended for twenty-one days from the date of this ruling. For avoidance of doubt, I need not determine the other reason for extension of time advanced by

the applicant concerning the alleged illegality. Costs shall abide by the outcome of the intended appeal.

It is so ordered.

DATED at **KIGOMA** this 27th day of June, 2024.




J. F. NKWABI
JUDGE