

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 803 OF 2016**

**JOSEPH FREDIRICK MAKALA.....APPLICANT**

**VERSUS**

**ASIA KHAMIDU KILUKU.....RESPONDENT**

**RULING**

*03/05/2018 & 25/05/2018*

**MZUNA, J.:**

This is an application for leave to file notice of appeal as well as leave to appeal to the Court of Appeal out of time. The application has been preferred under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 RE 2002. There is also an affidavit deposed by the applicant. The respondent filed a counter affidavit in opposition.

The main issue is whether there is sufficient cause shown for the delay to file the notice as well as the appeal on time?

Arguing in support of the application the applicant said that he failed to file it within time because after closure of their case, the Hon. Trial Judge notified them to file written submissions and were to be notified on the date of the judgment because he went on leave. That he learnt that judgment was delivered long time ago in his absence.

The respondent who appeared in person just like the applicant strongly disputed this application. She said that on the date of the judgment they were notified through notices. That the non appearance was not due to lack of notice as alleged.

In the counter affidavit the respondent has said that if the applicant admits to have been supplied with copies of judgment and decree on 12/08/2016 still there was no explanation given for the delay from 12<sup>th</sup> August 2016 to 29<sup>th</sup> September 2016 when he filed the present application. She prayed for dismissal of this application.

In his rejoinder, the applicant insisted that he was not served with the notice though he left his address and mobile phone number. That he resides at Morogoro.

As a matter of fact judgment sought to be challenged was delivered on 20<sup>th</sup> August 2016 in the absence of the parties. The allegation of the respondent that she was present is not true. That being the case, the alleged notice that he was aware has not been proved.

Another point which has been raised is on the unexplained delay from when he was served with the copies of judgment and decree. It has been held time without number that in the application of this nature the applicant must "account for each day of the delay." In other words about one month and seventeen days have not been given any explanation.

However the said period cannot be said that there was an in ordinate delay. In other words he acted diligently. There is sufficient cause shown. For the above stated reasons I grant the application as prayed for.

Time is hereby extended for another 30 (thirty days) so as to file both the notice and leave to appeal to the Court of Appeal.

Application allowed. Each party to bear its own costs.



  
**M. G. MZUNA**  
**JUDGE**  
**25/05/2018**