

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO.477 OF 2016**

**MUSSA H. MJARIWA (The Administrator  
of the Estate of the Late JUMA MJARIWA).....APPLICANT  
Versus**

**WINNIE MUSHI.....1<sup>ST</sup> RESPONDENT  
FRANK MWALEMBE & 6 OTHERS.....2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 22.3.2018*

*Date of Ruling: 4.5.2018*

**R U L I N G**

**S.A.N. WAMBURA, J:**

The applicant **Mussa H. Mjariwa (The Administrator of the Estate of the Late JUMA MJARIWA)** made this application under Section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2002 and Section 95 of the Civil Procedure Code Cap. 33 R.E. 2002 for orders that:

- a) That this Court be pleased to grant leave of the extension of time to file the appeal out of time.*
- b) Cost of this application be provided.*
- c) Any other or further orders as the Honourable Court may deem fit and just to grant.*

The application is supported by the affidavit affirmed by **Mussa H. Mjariwa** the applicant.

Respondents **Winnie Mushi** and **Frank Mwalembe** filed a counter affidavit bitterly challenging the application.

At the hearing the applicant was represented by Mr. Kalulu on behalf of Khatibu learned Counsel whereas the respondents were represented by Mr. Magoti Advocate.

In support of the application, Mr. Kalulu contended that the reason for the delay to file appeal within time on the part of the applicant was due to the delay in obtaining copies of the judgment and decree. He further stated that the Administrator of the deceased Estate resides at Lushoto hence communication was difficult between the family members.

He further alleged that ignorance of the law on part of the applicant was also one of the reasons for delay to file the appeal within time. He therefore prayed for the applicant's application to be granted as prayed.

In response, Mr. Magoti stated that there was no proof that the applicant applied for the copies of the judgment on 30/10/2014 as alleged. He submitted that the copies of judgment and

decree were ready for collection as of 20/11/2015 and the respondent got her copy on 18/01/2016. Mr. Magoti was of the view that the applicant did not take any efforts in pursuing the copies of the judgment and decree. That even after receiving the same, he filed this application on 06/5/2016. That from 28/11/2015 to 21/06/2016 it was almost 5 months.

He averred that the reasons advanced by the applicant are not sufficient for the grant of the application because ignorance of the law is not an excuse in delaying to file the appeal within time. He therefore prayed for the application to be dismissed with costs.

In reply, Mr. Kalulu reiterated his earlier submission in chief.

The law requires this court to grant such applications where sufficient causes have been adduced. In the case of **Benedict Mumello Vs Bank of Tanzania** Civil Appeal No. 12/2002 the court held inter alia that:-

*“It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and*

*that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

The term sufficient cause has not been defined. However, in the case of **Yusuph Same and Hawa Dada Vs Hadija Yusuf** Civil Appeal No 1 of 2002, the Court of Appeal elaborated on the term of sufficient cause *"that it should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking necessary steps"*.

The reasons for delay to take the necessary steps have been explained in paragraphs 3-7 of the applicant's affidavit.

In my opinion I find no justifiable reason advanced by the applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file an appeal out of time.

The applicant did not show diligence in making a follow up of his case. It is in the record that the copies of the judgment and

decree were ready for collection since on 20/11/2015 but he opted to file this application on 21/06/2016 after the lapse of six (6) months.

It is trite law that where there is inaction/ delay on the part of the applicant there ought to be some kind of explanation or material to enable the court to exercise its discretion.

In the case of **Alimran Investment Ltd Vs Printpack Tanzania and Others** (unreported) it was held that;

*“Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation”.*

Unfortunately this has not been done.


One of the reasons for delay advanced by Mr. Kalulu was that the applicant was ignorant of the law. With due respect to Mr. Kalulu as has been held in a number of times by the Court of Appeal and this Court, ignorance of the law has never featured as a good cause for extension of time.

In the case of **Anna Haule Vs Salum Ally** Misc Application No. 250 of 2004, HC, DSM Registry, Hon. Manento, JK (as he then was) held that and I quote;

*“Ignorance of the law is not an excuse. The applicant have failed to justify why she was late to appeal in time”.*

The same was held in the cases of **Bariki Israel Vs The Republic**, Criminal Appl No. 4 of 2011 and **Charles Salugi Vs The Republic** Criminal Appl No. 3 of 2011.

Having said so, the application is accordingly dismissed for want of merit with Costs.

**S.A.N WAMBURA**  
  
**JUDGE**  
**4.5.2018**