

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 365 OF 2018**

FATUMA MOHAMED.....APPLICANT

VERSUS

ABDULLATIF MOHAMED.....RESPONDENT

RULING

Date of last order: 1/10/2019

Date of Ruling: 31/12/2019

S.M. KULITA J;

This is an application for an extension of time for leave to appeal to the Court of Appeal. The application is made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002]. The application is accompanied with a chamber summons supported by the affidavit deposed by **FATUMA MOHAMED**, the applicant. The said applicant seeks the for extension of time to file appeal to the Court of Appeal of Tanzania against the Judgment of the High Court of Tanzania (Dar es Salaam), in Civil Appeal no. 253 of 2017, delivered on

27/4/2018. The application was disposed of by way of written submissions.

The applicant submitted that the application was made by way of Chamber Summons supported by an affidavit affirmed by the applicant, FATUMA MOHAMED in which she prays the said application to be granted for the reasons stated from paragraph 8 to 13 of the affidavit.

In her written submission the applicant through her Advocate Mr. Edward Peter Chuwa submitted that the applicant prays for leave to appeal to the Court of Appeal of Tanzania. The learned Advocate submitted that in her affidavit the applicant has advanced the reasons for seeking the said extension. He also submitted that it is the court's discretion to grant an extension of time upon giving reasons in which were two; one was the delay of the court to supply her with the copies of ruling and drawn order which has also been stated in paragraph 9 and 10 of the affidavit. Immediately after being supplied with those documents on 25/6/2018 the applicant filed this application. The second relates to the claim of illegality that the execution was conducted without the applicant being summoned to show cause. Lastly the applicant's Advocate prayed for this court to grant the extension of time.

In reply to the applicant's submissions the respondent ABDULATIF MOHAMED submitted that he concurs with the applicant's Learned Advocate that an application for extension of time can be granted if sufficient cause has been shown but he disagrees with the fact that the applicant made efforts to get the copies of the Ruling and and Drawn Order. He said that she has not given any evidence to show that she made efforts to get the said copies.

The respondent also submitted that there was no illegality in the order of the High Court which is gist of this application as submitted by the applicant's Advocate. He said that the applicant's advocate misdirected the court and therefore this application should be dismissed.

Despite the fact extension of time is entirely in the discretion of the court the party seeking for extension of time has to move the court by establishing the grounds necessary for that purpose, see **BENEDICT MUMELO V. BANK OF TANZANIA, CIVILAPPEAL NO. 120F 2002, CAT AT DSM (UNREPORTED)**. The same court, in a case of **LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010 (UNREPORTED)** made a

detailed clarification as guidelines for the courts to consider in granting extension of time as follows;

- (i) The applicant must account for all the period of delay*
- (ii) The delay should not be inordinate.*
- (iii) The applicant must show diligence and apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) If the court feels that there other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge.*

With regard to the application at hand the applicant under paragraph 8 of her affidavit stated that on the 14th day of April, 2018 she wrote the letter to the Registrar requesting to be supplied with the certified copies of the proceedings, Ruling and Drawn Order for the purposes of preparing the appeal. Immediately on following day, that is 15th May, 2018 she lodged a Notice of Appeal which means the applicant acted promptly and diligently.

With this regard the basis of showing sufficient cause and accounting for delay by the applicant have been complied with as stated in the submission and paragraph 11 of the affidavit that her delay was caused by the await of the being supplied

with the copies of proceedings, Drawn Order and ruling which were supplied to her on 25th June, 2018. The respondent submitted that the applicant ought to write a reminder letter when she discovered that the time was running out against her, I find the respondent's argument baseless. It was not mandatory for her to do so as long as she had already written a letter and the time that had passed was about two months only. All in all the circumstances were beyond the applicant's control.

It is also important to note that in an application for extension of time the only hard and fast rule for the application to succeed is upon showing good cause for the delay to which in the application at hand the applicant has managed to show. The fact that there are matters relating to illegality as submitted by the applicant's Learned Advocate and as opposed by the respondent, they are not worthy to be discussed at this stage.

In the view of the foregoing reasons I am satisfied that the applicant had sufficient cause for the delay. She has moved this court that she had acted promptly, reasonably and diligently enough for this court to warrant her extension of time.

I find this application has merit, hence allowed. The applicant to file her application for leave to appeal within 30 days period from the date of this ruling. No order as to costs.



S.M. KULITA

JUDGE

31/12/2019