

**IN THE HIGH COURT OF TANZANIA****AT DAR ES SALAAM****MISC. CIVIL APPLICATION NO. 268 OF 2004****SAMWEL PYUZA..... APPLICANT****VERSUS****SIMON GAU..... RESPONDENT****Date of last order: 25/4/2006****Date of ruling: 3/5/2006****RULING****MANENTO, JK:**

The applicant have properly filed an application for extension of time to file an appeal out of time. The chamber summons is supported by his affidavit.

The applicant in his affidavit stated as a ground for delay to file the appeal was the guidelines he was informed by the trial magistrate that he should file a revision instead of an appeal. He had actually filed Civil Revision No.1134/2001 which was dismissed by this Court on 17/8/2004. In his affidavit, the applicant deponed that he had attached a copy of the judgment of the trial court as annexure S.2 but the said copy is not attached. That is a serious omission.

On the other hand, the respondent in his counter affidavit and submissions made by Kishauli learned counsel for the respondent, depon that there is nowhere in record to show that the applicant was misdirected by the court to file a revision instead of an appeal. Mr. Kishauli, learned counsel submitted that the applicant was informed of his rights to appeal against the decision of the trial court and not to file an application for revision.

I agree with the learned counsel for the respondent that what the applicant is alleging has no support of either the record of the court or any affidavit of the alleged trial magistrate. Courts cannot just act on allegations. If it could so act, then the sky would be the limit. The applicant ought to substantiate his allegations by a support of the affidavit of the trial magistrate who so advised him. I say so because, as submitted by the learned counsel fro the respondent, and conceded by the applicant, the judgment of the trial court informed the applicant of his right of appeal and nothing more.

In order that the court could grant an extention of time to file an appeal, there must be sufficient reasons for the delay. In the application before me, there is not even a grain of reasonable reason, other than an allegation. As earlier said, the court cannot act on allegation, and allegations

cannot be sufficient reason for the grant of extension of time to file an appeal. On those reasons, the application is dismissed with costs.

  
A.R. Manento

**JAJI KIONGOZI**

**3/5/06**

Coram: Kitusi, DR

FOR THE Applicant –Present in person

For the Respondent – Present Grace Mihayo advocate.

Cc: Frank

Court: Ruling delivered in court in the presence of the applicant in person and advocate Grace Mihayo of Kishauli and Co. Advocates for the respondent this 3<sup>rd</sup> day of May, 2006.

**I.P. Kitusi**

**DEPUTY REGISTRAR-HIGH COURT**

**3/5/2006**