

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 79 OF 2017**

**(C/F Resident Magistrate's Court of Arusha in Civil Case No.  
20/2016)**

**NOELLA FABIAN MUHINDI ..... APPLICANT**

**VERSUS**

**BRAUBURN SACCOS.....RESPONDENT**

**RULING**

**DR. OPIYO, J.**

This application was preferred by the Applicant in her bid to seek extension of time to have her appeal against the decision of the Resident Magistrate's Court of Arusha in Civil Case No. 20/2016 filed before this court out of time. In this application the Applicant was represented by one Ephraim A. Koisenge Advocate while the Respondent enjoyed the service of Mr. Mhyellah Advocate.

Upon this application coming for hearing on 3/5/2018 for hearing this court ordered that this application be argued by way of written submission and indeed both parties duly complied with the scheduling set. Much thanks to the counsels for timely compliance.

The Applicant's Counsel in support of the application essentially submitted that the Applicant's delay to have her appeal filed before this

court within statutory period of time was mainly caused by the delay of the trial court to avail her with copies of judgment and decree of the challenged decision forming crucial documents in appeal process as one cannot appeal without those documents as per Order XXXIX rule 1(1) of the Civil Procedure Code (CAP 33 R: E 2002). The position which he supported with the case of **Olipa Daniel v. Jangawe Msuya (2006) TLR page 18** where this court held that, all appeals under the Civil Procedure Code must be accompanied by the decree or drawn order appealed from and failure to do so appeal becomes incompetent.

The Counsel went further submitting that delay by the Applicant to appeal before this court on time is not in anyway attributed to her own laxity as she promptly requested to be furnished with appealing documents namely, judgment and decree immediately after the court pronounced the judgment, but she was not availed with the same until 13<sup>th</sup> July, 2017 when she received copies of the same.

Basing on the foregoing submission the Counsel submitted that in as far as this application is concerned, the Applicant has managed successfully to give sufficient cause which is a legal test need to be passed in application of this nature regarding her delay to lodge her appeal before this court.

The Respondent's Counsel on the other hand vehemently opposed the application by submitting that, the Applicant has failed to show sufficient cause which is a requirement to be met in application of this nature. In substantiating his submission, the Counsel pointed out that factors that

this court need to take into consideration include whether the application was brought promptly, was there any delay, and if yes is there any valid explanation for delay and that was then Applicant acted in a total apathy, negligence and sloppiness.

According to the Applicant's Counsel the reason for delay by the Applicant is due to her own laxity as the judgment upon which the appeal is preferred was rendered on 9<sup>th</sup> February 2017 and application for extension of time was lodged on 17<sup>th</sup> July, 2017. The Counsel further submitted that collection of the appeal documents from the lower court was delayed by the Applicant herself due to her own inactivity since the said documents were ready for collection early than 13<sup>th</sup> July, 2017 as the same were issued by the trial court on 5<sup>th</sup> July, 2017. So according to him this delay depicts negligent on the part of the Applicant as she was not making serious follow up of the same.

Having keenly reading the arguments of both parties in this application, and carefully going through the records, I see no any legal justification whatsoever to deny the Applicant access to exercise her constitutional right of appeal before this court.

I am inclined to form this view basing on the obvious fact that, copies of both judgment and decree from the trial court was made available for collection on 5<sup>th</sup> July 2017 and the Applicant collected the same on 13<sup>th</sup> July, 2017 and two days later, she lodged this application before this court. to me that was promptly enough as collection was made within a

week of documents been made available and again promptly she filed this application within another week.

My decision is backed up with the legal position that is set by Order XXXIX rule 1(1) of the Civil Procedure Code (CAP 33 R: E 2002) and the case of OLIPA DANIEL V. JANGAWE MSUYA (2006) TLR page 18 as correctly cited by the Applicant Counsel. Both cited authorities, the order and decision of court insist that every appeal from the lower courts to this court must be accompanied by copy of judgment and decree of the challenged decision as such absence of these documents no appeal properly so called can competently be filed before this court.

After considering totality of circumstances of this matter, I see no laxity on part of the Applicant that can make me not to grant this application. This is so because in my view the difference between time of issuing copies of judgment and decree and time of filing this application is not long enough to establish laxity on part of the Applicant to the extent of denying her constitutional right to appeal as the appeal documents were issued on 5<sup>th</sup> July 2017 and this application was filed on 17<sup>th</sup> July, 2017.

In the final analysis and for all the above reasons, I hereby grant this application. The said appeal be filed within 14 days from the date of this order. I make no order to costs.



A handwritten signature in black ink, appearing to be "M. Opiyo", is written over a horizontal line.

**DR. M. OPIYO,**  
**JUDGE**  
**27/8/2018**