

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 43 OF 2017

(Arising from Civil Case No. 128 of 2011)

THOMAS STEVEN OSASO APPLICANT

VERSUS

ABRAHAM MATHEW..... RESPONDENT

RULING

MURUKE, J.

This is an application for extension of time within which to file an appeal in this Court. Before filing of this Application, the Applicant had lodged an appeal which however was struck out by my brother Songoro, J, on 7th October, 2016, after found that, the decree was defective for bearing two dates.

The Application is made under 14(1) of the Law of Limitation Act, Cap 89R.E. 2002 as well as section 95 of the Civil Procedure Code Act, Cap 33. R.E. 2002. It is supported by an Affidavit of Thomas Steven Osaso, which contains the factual evidence establishing the grounds of application. The Applicant was represented by the learned advocate Kennedy Lyimo, while the respondent enjoyed the service of learned advocate Agness Audax.

The counsel for the applicant submitted that, the delay to file an appeal was not caused by negligence nor inaction of the Counsel for the Applicant and/or his client but the trial magistrate who mistakenly wrote two different dates in the decree which led this court to strike out our appeal. He further submitted that after the striking out of the appeal, he promptly requested for certified copies of the ruling and order and thereafter wrote a letter to the Resident Magistrate in charge for rectification of error. Following the close follow-up of the matter, the corrected decree was issued on 26th January, 2017. Mr Kennedy Lyimo also submitted that the decree to be challenged is problematic that the computation of ware and tire was not properly done.

Lastly, the counsel for Applicant invites the Court to hold that the reasons pointed out in his submissions constitute sufficient cause with the view that defective proceedings being instituted within time and the reason for the striking out of the same was caused by administrative mistakes of the trial court.

The learned counsel for the respondent, Agness Audax submitted although the applicant's counsel was negligent by

attaching the defective decree. She also submitted that issue of decretal amount of ware and tire is problematic. However, the learned counsel conceded to the application for extension of time.

Much as I agree by the Counsel for the Respondent that due diligence by the Counsel for the Appellant would make him to discover the defect and therefore cause correction of the same before filing, that does not change the fact that the cause of the issuance of the defective decree is the trial magistrate and not the Counsel for the Applicant because decrees are signed by judges and magistrates. **It sounds unfair and inequitable, in my considered opinion, for a party to civil litigation to be punished for an error committed by the court and more specifically where the error is within the domestic affairs of the court. Throughout history, courts of law have assumed the position of custodians of justice. It therefore comes as a surprise and indeed it lowers down the reputation and respect of the court when parties submitting themselves to the jurisdiction of the court loose their cases for wrongs committed by court.**

It is now an established position of the law that in exercise of their duty of administration **of justice**, courts of law are required to give substantive justice priority to legal technicalities. The Parliament of the United Republic of Tanzania has of recent, amended the Constitution of the United Republic of Tanzania, 1977 by introducing the provision of **article 107 A (2) (e), which in essence directs judicial officers that in discharging their adjudication duty, have to give substantive justice priority to legal technicalities.**

There are many authorities supporting that position. The Court of Appeal of Tanzania as per Munuo, J.A., in the case of China Henan International Co – operation Group Co. Ltd Vs Salvand K. A Rwegasira, Civil Application No. 43 of 2006, for instance, took the view that procedural rules are there to guide for an **orderly and systematic presentation of a cause so as to help the substantive law and not to enslave the same.** In particular the Justice of Appeal had the following to say and I quote.

“It is a well established principal that the object of Courts is to decide the rights of the parties and not to punish them for mistakes they make

in conduct of their cases by deciding otherwise than in accordance with their rights I know of no kind of error or mistakes which if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the indiscipline but for the sake of deciding matters in controversy."

In the instant case, the Applicant having obtained copies of the judgment and decree, timely preferred an appeal which came out to be struck out for the reason that the date of the decree was at variance with that of the judgment. That was no doubt caused by the trial magistrate who signed the judgment and decree. As soon as the appeal was struck out, the Counsel for the Applicant promptly took the necessary steps to procure a corrected version of the decree. Three days from the date of the collection of a corrected version of the decree, the Applicant filed the Application for extension of time.

The Counter Affidavit of the Respondent does not demonstrate any factual evidence to suggest that the grant of extension of time to the Applicant for filing an appeal will

lead to any miscarriage of justice. In the circumstance, I find myself unable to do without granting extension of time as I am satisfied that the applicant has demonstrated sufficient cause to justify an extension of time within which to file an appeal, for the purposes of **section 14(1) of the Law of Limitation Act, Cap 89, R.E. 2002.**

I therefore grant extension of time to the Applicant to file an appeal, the intended appeal to be filed within 14 days from today. I make no order as to costs.

It is so ordered.

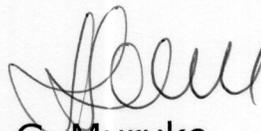


Z. G. Muruke

JUDGE

27/02/2018.

Ruling delivered in the presence of Kennedy Lyimo for the applicant and Agness Audax for the respondent.



Z. G. Muruke

JUDGE

27/02/2018.