

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 381 OF 2017  
(Originating from the decision of the District Court of Ilala at  
Samora in Civil Case No. 130 of 2005)**

**ZABRON MUHOMI.....APPLICANT**

**Versus**

**DASTAN RICHARD KIJAZI.....RESPONDENT**

**RULING**

**B.R. MUTUNGI, J:**

This ruling is in respect of an application filed by the applicant seeking for extension of time to be able to appeal against the decision of Ilala District Court at Samora in Civil Case No. 130 of 2005 which was delivered on 3/6/2015.

The instant application is brought in terms of 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].

The same is supported by an Affidavit sworn by the applicant.

According to the court's record, the respondent herein successfully sued the appellant at the trial court on a course of action arising out of a breach of contract. The applicant appears to be dissatisfied with the said decision but since the appeal time had already expired, he has preferred to seek first for extension of time before knocking at the doors of this court on appeal.

The applicant's reason for the delay as per his affidavit is that, on 8/6/2015 he had written a letter to the trial court requesting to be supplied with the copies of the judgment, proceedings and decree. He further deponed to have been supplied with these documents on 28/8/2015. The applicant further lamented on his former Advocate's negligence which led to the delay for the reason that , the

former memorandum of appeal was struck out. He thus pressed upon the court that there are overwhelming chances of success in his intended appeal.

Basically, the respondent in his counter affidavit strongly objected the application and proceeded to state that, the applicant was supposed to adhere to the law in processing his intended appeal.

The court thereafter ordered the application be disposed by way of written submissions. Both parties have filed their respective written submission on time as ordered.

The applicant in his written submission submitted that, the intended decision to be challenged was delivered on 3/6/2015 and he promptly requested to be supplied with the copies of judgment, decree and proceedings on 8/6/2015.

The applicant further argued that, on 28/8/2015 he was supplied with the said copies but by that time the

prescribed appeal period had already elapsed. He further submitted that on 29/9/2015 had made an attempt to file the intended appeal herein but was struck out for being time barred. The applicant argued that, his former legal Counsel had filed the first appeal believing that the court would exclude the time taken to obtain the appeal documents under **section 19 (2) and (3) of the Law of Limitation [Cap. 89 R.E 2002]**.

The applicant was of the view the delay occasioned was beyond his control and prayed the court to exercise its discretionary powers in granting the instant application.

On the other side of the coin, the respondent submitted that, the applicant is misleading the court since the first appeal was not struck out but it was dismissed under **section 3 (1), of the Law of Limitation Act (supra)** for being time barred. He further suggested the delay to file the appeal

within the time prescribed was due to the applicant's and his counsel's negligence. The respondent thus prayed the application be dismissed with costs.

The crucial and pertinent issue here is whether the applicant has advanced sufficient reasons in support of the application. In the case of **BENEDICT MEMELLO VERSUS BANK OF TANZANIA, CIVIL APPLICATION NO. 12 OF 2002 (CAT-DSM) (UNREPORTED)** at pages 6 and 7 the apex court cited with approval the case of **TANGA CEMENT COMPANY LIMITED VERSUS JUMANNE D. MASANGWA AND ANOTHER, CIVIL APPLICATION NO. 6 OF 2001 (UNREPORTED)** it was stated;

*'What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the application has been brought promptly; **the absence of any or valid explanation***

***for the delay; lack of diligence on the party of the applicant.*** [Emphasis is mine]

Upon my objective perusal of the court record and the respective submissions, I find the applicant has failed to advance sufficient reasons in support of the application. The record is very clear that on 3/6/2015 the trial court delivered its decision which the applicant herein intends to challenge by way of an appeal. It is further revealed the applicant requested to be supplied with the copies of the judgment, proceedings and decree on 8/6/2015 and the instant application was filed herein on 10/7/2017. It would appear the applicant had previously filed an appeal herein since he alleges the same was struck out for being time barred and the respondent states it was dismissed for being time barred under section 3 (1), of the Law of Limitation Act (supra).

However, there is no evidence tendered herein by both parties to suggest as to whether the applicant's previous appeal was strike out or dismissed for being time barred. Be as it may, I am of the settled view there was filed a previous appeal since both parties have not disputed this fact. However, whether the said appeal was struck out or dismissed as alleged by the applicant and respondent respectively is uncertain.

The foregoing notwithstanding, whether the said appeal was struck out or dismissed for being time barred, since its existence not disputed, this indicates there was negligence on the applicant's part by filing the former appeal knowing it was out of time. For that reason, I hesitate to buy the applicant's contenting that his former Advocate was negligent to the extent that he caused the delay. There is

no such proof to support that allegation in accordance with **section 110 (1) of the Evidence Act [Cap. 6 R.E 2002]**. For the sake of clarity, **section 110 (1) of the Evidence Act [Cap. 6 R.E 2002]**, states as follows;

*'Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts **must prove that those facts exist.**'* [Emphasis is mine]

Further, in the threshold of the case of **ABDUL-KARIM HAJI VERSUS RAYMOND NCHIMBI ALOIS AND ANOTHER, CIVIL APPEAL NO. 99 OF 2004 (CAT-ZNZ) (UNREPORTED)** at page 7 the Court of Appeal it held;

*'It is an elementary principle that he who alleges is the one responsible to prove his allegations.'*

All in all, despite the fact that the applicant appeared to request to be supplied with the copies of judgment,

decree and proceedings promptly, but thereafter the applicant slept over his right of appeal. This is because the applicant alleges that on 28/8/2015 he was supplied with the said copies ( judgment and proceedings) and filed his former appeal on 29/9/2015 which was accordingly struck out or dismissed as alleged by the applicant and respondent respectively. Even if I take the applicant's position on that angle, I still find the applicant has not moved the court with any reasons or explanation in accounting for the period that followed up to 10/7/2017, when this application was filed.

It is trite law that, failure of the applicant to account for the days delayed in an application for extension of time amounts in failure to advance sufficient reason. This legal position was well amplified by the Court of Appeal of Tanzania in the case of **VODACOM FOUNDATION VERSUS**

**COMMISSIONER GENERAL (TRA), CIVIL APPLICATION NO. 107/ 20 OF 2017 (CAT-DSM) (UNREPORTED)** at pages 9 and 10 where it held;

*'...Delay even **a single day, has to be accounted** for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken...**Those who come to courts of law must not show unnecessary delay in doing so; they must show great diligence.**'*

[Emphasis is mine]

Following the foregoing analysis, the applicant has failed to account for and prove that the said delay was beyond his control as propounded in the above stated legal positions. Consequently, I sanction the application to a dismissal.

All said, I hereby proceed to dismiss the application with costs.

It is so ordered.

  
**B.R. MUTUNGI**

**JUDGE**

**12/4/2018**

Right of Appeal Explained.

  
**B.R. MUTUNGI**

**JUDGE**

**12/4/2018**

Read this day of 12/4/2018 in presence of the Applicant and Respondent in person.

  
**B.R. MUTUNGI**

**JUDGE**

**12/4/2018**