

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO 144 OF 2017

(Arising from PC Probate Appeal No 14 of 2017)

YOHANA MSUKAAPPLICANT

VERSUS

PETER LUTEMARESPONDENT

RULING

25 & 28/02/2020

RUMANYIKA, J.:

The application for extension of time within which Yohana Msuka (the applicant), with respect to decision of 10/7/2017 of Sengerema district court (the lower court) to appeal to this court is brought under Rule 3 of the Civil Procedure (Appeals in proceedings originating in primary courts) Rules, GN no. 312 of 1964. It is supported by affidavit of Yohana Msuka. Whose contents Mr. B. Msalaba learned counsel for the applicant adopted during the hearing. Peter Lutema (the respondent) appeared in person.

Mr. B. Msalaba learned counsel in a nutshell submitted that following the impugned judgment and decree of the primary court, but in the applicant's back the respondent having successfully applied for revision,

the applicant had not been aware of it all until at such time when he was served with a notice of execution. That the delay was not caused by negligence or dilatory conduct of the applicant. That since his 1st attempt i.e Pc Probate Appeal No 14 of 2017 was struck out on 9/10/2018 by this court (Siyani, J.) for being time barred, the applicant had been busy in the court corridors. That since the the applicant had no legal representation then, no way he could have known that he was time barred. That it took the applicant hardly ten (10) days to come back and therefore he was vigilant enough to pursue his appeal. That is all.

In his reply, the respondent submitted that, if at all he was a layman, the respondent should have earlier engaged a lawyer. That if anything, the applicant had not accounted for each day of the ten (10) days delay. I pray that the application be dismissed. Stressed the respondent.

Questioned by the court for more clarity, the applicant's learned counsel submitted that his client hadn't accounted for each day of the ten (10) delay yes, but he had been vigilant. That the lower court shouldn't have reversed the trial court's decision and issue the detrimental decision against but in the back of the applicant.

The issue, and it is settled law is whether the applicant has assigned a sufficient ground for extension of time.

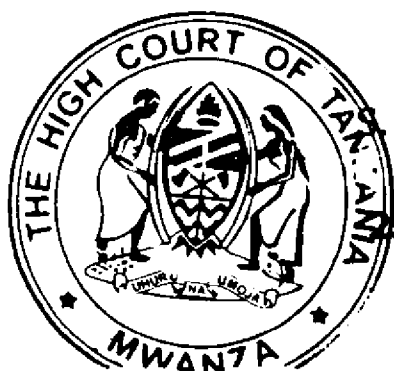
The applicant may have been vigilant and militantly committed in pursuing his right to appeal yes! But silently though, Mr. B. Msalaba learned counsel did admit that indeed contrary to the law, the applicant

had not given account for each day of the ten (10) days delay or of any shorter period of time!

Moreover, now that it was an undeniable fact that in essence following the respondent's letter of complaint (of even date and reference number) and now **sua motu** the lower court having called for the records with a view to satisfying itself with the correctness, legality or propriety, and it was so satisfied, the court reversed the trial court's decision perhaps rightly and to let the High court's decision to prevail. However correct the lower court's decision might be, it can be left to stand for the obvious reason that the applicant was not availed a hearing. Leave alone a fair hearing. It is settled law that unless the outcomes were not detrimental to a party, very seldom than not court's should determine and reverse decisions in presence of the parties. Now that the detrimental decision was made in the back of the applicant, suffices the point of illegality to dispose of the application.

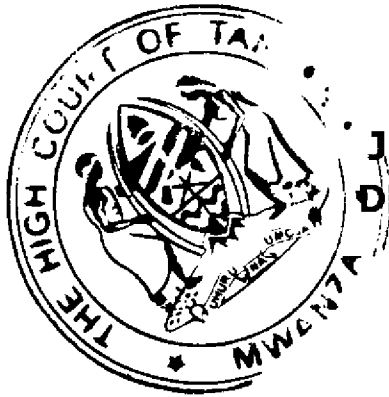
The application for extension of time is granted. I would make no order for costs. Given its historical background and nature after all on that one the applicant remained silent. It is ordered accordingly.

Right of appeal explained.



M. Rumanyika
JUDGE
25/02/2020

Delivered under my hand and seal of the court in chambers this 28.2.2020 in the presence of the applicant and respondent.



A handwritten signature in black ink, appearing to read "J. M. Karayemaha".

J. M. KARAYEMAHA
DEPUTY REGISTRAR
28/02/2020