

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. CIVIL APPLICATION No. 50 OF 2019

(Arising from the District Court of Karagwe at Kayanga in Civil Case No. 7 of 2018)

DAMIAN KAFANABO ----- APPLICANT

Versus

STIVIN BIGIMBWA ----- RESPONDENT

RULING

18/11/2020 & 23/11/2020

Mtulya, J.:

This is an application for enlargement of time (the Application) within which Mr. Damian Kafanabo (the Applicant) may file an appeal out of time to contest a decision of the **District Court of Karagwe at Kayanga in Civil Case No. 7 of 2018** (the Case) pronounced on 13th May 2019. The Application was lodged in this court on 12th December 2019. The reasons of seven (7) months delay are stated paragraphs 3 to 6 in the Applicant's Affidavit and were detailed during the hearing of this Application.

In short, the Applicant says the delay was not caused by his negligence or apathy on his part and that after becoming aware of the delay he brought the Application in this court promptly without any further delay. When the Application was scheduled for hearing

on 18th November 2020, both parties appeared themselves without any legal representation.

The Applicant briefly stated that the judgment in the Case was delivered on 13th May 2019, but it was ready for collection on 18th September 2019. However, its decree was collected on 25th October 2019 printed with wrong dates contrary to the dates in the judgment hence on 30th October 2019, the Applicant applied for rectification before the District Court of Karagwe at Kayanga. The Applicant stated further that the rectified decree was ready for collection on 4th December 2019 and on 5th December 2019 he drafted the present application and registered in this court on 12th December 2019. To his opinion, the Applicant thinks that the delay was not caused by his faults and filed the present application without any apathy.

Responding on the submission registered by the applicant, Mr. Stivin Bugimbwa (the Respondent) resisted the Application arguing that this is third time the Applicant is parading him in courts of law. According to the Respondent, the Applicant initially sued him jointly with the Society claiming Tanzanian Shillings Fifty Million (50,000,000/=) and second time when he sued him as an individual person for malicious prosecution and claimed Tanzanian Shillings

Forty (40,000,000/=) as general damages. The Respondent submitted further that the Applicant has not adduced any evidence to substantiate his submission.

In a brief rejoinder, the Respondent argued that all documents showing the truth of his submission were attached in the Application and the Respondent was served on 30th March 2020. With the three cases which summoned the Respondent in courts of law, the Applicant briefly stated that the Case states it all.

On my part, I decided to peruse the record of the Application to see the version of the Applicant's story. The record reveals the following facts: on 13th May 2019, a decision in the Case was delivered. However, it was certified 18th September 2019 hence supplied to the parties without any decree. The decree emanated from the same decision in the Case was extracted on 25th October 2019 and certified on the same day, but it depicted different date from the date of the decision in the Case.

According to the Applicant, he could not prefer an appeal with a defective decree hence applied for rectification. The letter dated 30th October 2019 was attached in the Application to justify vigilance on the part of the Applicant. In paragraph 6 of the Applicant's Affidavit depicts that the Applicant was supplied with the decree on


4th December 2019. However, the record is silent on the date when the Applicant received the decree. It is unfortunate that the rectified decree was officially stamped as certified copy on 13th May 2019, even before authorization of the judgment, which was officially certified on 18th September 2019. This cannot be said as proper record of the court. The amended decree was supposed to be printed at the title as Amended Decree and should have been certified after the initial judgment and decree, as it was prepared after the certification of the initial judgment on 18th September 2019 and decree on 25th October 2019.

I understand the law on enlargement of time requires applicants to register satisfactory materials to justify their delay and depict promptness in filing applications for extension of time to file appeals or applications out of statutory time (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010), but the current Application was filed premature without considering the correctness of the amended decree. Even if this court finds that there are relevant materials registered and the Application was brought without any apathy on part of the Applicant, and therefore

grant the Application, the appeal in this court will not stand. It will be struck out for want of competence.

Having said so and considering this application is premature for want of proper amended decree and regarding interest of justice to the parties, this Application must be struck out for want of proper record. I therefore hereby struck out this Application without any order as to the costs. The reasons is obvious. The defects were detected by this court and the Application was not determined to the finality. The Applicant may consult District Court for rectification of the decree, if he so interested in prosecuting his appeal. Ordered accordingly.




F. H. Mtulya

Judge

23/11/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant, Mr. Damian Kafanabo and in the presence of the Respondent, Mr. Stivin Bigimbwa.




F. H. Mtulya

Judge

23/11/2020