

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

**TEMEKE HIGH COURT SUB – REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MISC. CIVIL APPLICATION NO. 3 OF 2023**

*(Arising from judgment and decree of this court in Misc Civil Appeal No. 276 of 2021  
before Hon. Mugeta, J)*

**RAHMA SAID JAMIL ..... APPLICANT**

**VERSUS**

**MOHAMED JAMAAN HADI.....RESPONDENT**

**RULING**

**16/08/2023 & 29/08/2023.**

**M.MNYUKWA, J.**

By chamber summons supported by the affidavit affirmed by the applicant, this application was filed. It is preferred under the provisions of section 14 of the Law of Limitation Act, Cap 89 R.E 2019 and section 95 of Civil Procedure Code, [Cap 33 R.E 2019]. The applicant is moving this court on the following orders;

- a) This honourable court may be pleased to extend time within which the applicant can file review out of time from the judgment of this court in Misc. Civil Appeal No 276 of 2021 delivered on 11/7/2022.*
- b) Any other order(s) this court may deem fit and just to grant.*

In paragraph 5 and 6 of her affidavit, the applicant averred that the reason for her delay to file review in time was due to her financial



constraints. She stated, since she couldn't hire an advocate to take her case, she started looking for legal aid and luckily, she was assisted by the Tanzania Women Lawyers Association (TAWLA).

The applicant also deposed under para 8 of her affidavit that, when TAWLA was looking for an advocate to handle her case, they mistakenly filed an application for review in the High Court of Tanzania at Dar es Salaam District Registry instead of Temeke High Court Sub- Registry. According to her, those are the reasons for her delay which she said they were not caused to any negligence on her part. As it was expected, the application was opposed by the counter sworn in by the respondent.

At the hearing parties were represented, for the applicant, Mr. Amon Rwiza, the learned advocate entered appearance and for the respondent while Ms. Nuru Jamal, the learned advocate represented him. The application was argued orally.

To support the application, the learned advocate of the applicant adopted the applicant's affidavit and he submitted that, the applicant delayed to file review in time due to her financial instability since she receives legal aid from TAWLA. Mr Rwiza contended that at the time TAWLA finds an advocate to take her case she was already out of time for 5 months.

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'N' and 'U'.

Further, he added that applicant needs to review a judgment and decree which have different orders. He stated that the court intended to divide the underground floor and the ground floor, but divided the first floor and underground floor. Whilst, the decree has different orders which makes the execution to be impracticable. The learned advocate prayed for this court to invoke oxygen principle so that this application be granted.

Contesting, the learned advocate for the respondent argued that extension of time is granted when sufficient cause is established. She referred this court to the case of **Benedict Mmello vs Bank of Tanzania**, Civil Application No. 12/2012 and the case of **Lyamuya Construction Company Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

She said, the principle to account for each day of delay was established by the above cited cases. According to her, the applicant in this application did not account for the days she delayed. It was her argument that the delay is inordinate which was caused by negligence.

Ms Nuru argued that, the applicant's affidavit is silent on illegality, her view was that, it is an afterthought for the applicant to establish the



same during submissions. She added that as far as the impugned judgment is concerned there is no illegality on the said judgment.

She vehemently contended that the applicant is not poor as she painted herself to be unable to engage an advocate. She therefore prayed for this application to be dismissed since according to the learned counsel of the respondent if the same will be granted, it will prejudice the respondent.

In rejoinder, the learned advocate argued that this application is not intended to prejudice the respondent rather to rectify the judgement and decree which need to have the same orders.

Having heard the rival submissions of the parties, it is undisputed that applicant is out of the prescribed time for 5 months. Whereas, the Law of the Limitation Act, [Cap 89 R.E 2019] under para 2 of part III of a Schedule provides for 30 days for an application for review.

It is trite that granting or refusing to grant extension of time is in absolute discretion of the court, however the same has to be exercised judiciously. However, for this application to be granted, one must show sufficient cause and account for each day of delay. To hold so, I am fortified with the case of **Benedict Mmello** (supra) which held;



*"...It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse, extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause..."*

In this present application, applicant claimed to have failed to file application for review in time due to her financial instability and TAWLA's mistake of filing application in wrong registry. It is on record that the applicant did not account for each day of delay since she ought to have accounted as stated in the case of **Lyamuya Construction Company Limited (supra)**, but since applicant is on legal aid due to her financial instability, I am bound to say that her financial constraints cannot be taken to be insignificant. I therefore consider it to be sufficient cause for this application to be granted. To hold so, I am bound by the decision of the Court of Appeal in case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No.214/18 of 2020 at page 13 when it held;

*In the case at hand, the applicant, was equally on legal aid. On the authority of Yusufu Same (supra), his plea of financial constraints cannot be taken to be insignificant. I take it as sufficiently demonstrated that the applicant's delay is exceptionally excusable.*



Another reason that TAWLA mistakenly filed an application for review in a wrong registry is not sufficient cause because, not knowing where to file your case (for a lawyers) is negligence. I say so because, lawyers are bound to act in due diligence, mistakes are inexcusable. Nevertheless, as for this case at hand I hesitate to punish the applicant for the mistake done by her lawyers.

Additionally, after taking a look on the impugned judgment and decree I agree with the applicant that the two documents have different orders as far as the distribution of the property is concerned.

That being said, this application is granted, applicant is given 14 days from the date of this Ruling to file an intended application. No orders as to costs since the parties were spouse.



**M.MNYUKWA**

**JUDGE**

**29/08/2023.**

**Court:** Ruling delivered in the presence of parties and their counsels.

**M.MNYUKWA**

**JUDGE**

**29/08/2023**