

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

MISC CIVIL APPLICATION NO. 06 OF 2018

*(Originating from Civil Case No.13 of 2016 of the District Court of
Sumbawanga)*

**FELICIAN CREDO SIMWELA APPLICANT
VERSUS**

QUAMARA MASSOD BATTEZY..... 1ST RESPONDENT

ABDILLAH AHAMED YUSUPH..... 2ND RESPONDENT

Date of last Order: 17/09/2020

Date of Ruling: 24/11/2020

RULING

C.P. MKEHA, J

The applicant has moved the court for an order of extension of time within which to file an appeal to challenge the decision in Civil Case No. 13 of 2016 of the District Court of Sumbawanga. The application is brought under section 14 (1) of the Law of Limitation Act.

In terms of the affidavit in support of the application, initially, the applicant timely appealed against the impugned decision. However on 12/03/2018 this court struck out his appeal due to the fact that the decision of the District Court and an order extracted from the said decision beared different dates. That is when the applicant was forced to file the present application on 28/03/2018 seeking extension of time to file his appeal for the second time.

Submitting in support of the application, the applicant submitted that the omission which led to the striking out of the initial appeal was not of his own but of the trial court. He added that, the defects in the two documents were too latent for the applicant to notice. The applicant pressed for grant of the application.

Ms. Tumaini learned advocate submitted in reply that, the applicant was negligent in checking out the propriety and correctness of court's documents before he filed the first appeal. The learned advocate condemned the applicant for failure to account for the whole period for which he failed to institute the present application. In view of the learned advocate for the respondent, the applicant was not diligent enough in making follow ups of his rights.

The only issue for determination is **whether the applicant has adduced sufficient reasons for the delay.** It is not disputed that the omission that prompted the striking out of the applicant's appeal which had been timely filed was not caused by the applicant. After the said appeal had been struck out, the applicant filed the present application after sixteen (16) days since when his first appeal had been struck out. The applicant was therefore diligent in pursuing his rights. Sixteen (16) days delay is not inordinate delay on part of the applicant who was a lay person in the field of law. I therefore

make a finding that the applicant has sufficiently explained reasons for his delay.

For the foregoing reasons the application is granted. Thirty (30) days' time is given to the applicant for him to lodge his appeal out of time before this court. Application granted. I make no order as to costs.

Dated at **SUMBAWANGA** this **24th** day of **November, 2020**.




C.P. MKEHA

JUDGE

24/11/2020