

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

**AT BUKOBA**

**BUKOB SUB- REGISTRY**

**MISCELLANEOUS CIVIL APPLICATION NO. 4808 OF 2024**

*(Arising from Civil Appeal No.64 of 2023 in the District Court of Muleba)*

**VENANTE KASHUNKU..... APPLICANT**

**VERSUS**

**VERONICA KASHUNKU.....RESPONDENT**

**ORDER**

*30/04/2024 & 30/04/2024*

***E.L.NGIGWANA, J.***

After the demise of the late Ernest Kashunku, the respondent successfully petitioned for letters of administration of the deceased's estate in the Primary Court of Muleba District at Nshamba. The appellant, who was the objector, was aggrieved by the decision of the trial court therefore, knocked the doors of the District Court of Muleba through Civil Appeal No.64 of 2023 to challenge the same.

Upon hearing the parties, the District court dismissed the appeal and upheld the decision of the trial court. The appellant was again aggrieved by the decision of the first appellate court however, he did not lodge an appeal within the prescribed time hence this application.

The applicant has brought this application under section 25 (1), (b) of the Magistrates' Courts Act, [Cap 11 R.E 2019], seeking for extension of time within which to lodge an appeal out of time to challenge the decision of the District Court of Muleba. The same is supported by the applicant's affidavit.

When the matter was called on for hearing, the applicant was represented by Mr. Samwel Angelo while the respondent appeared in person, unrepresented. Submitting in support of the application, Mr. Samwel Angelo reiterated the contents of the founding affidavit. He added that, after being supplied with the necessary documents, and before filing this application, the applicant who is living in Dar es Salaam spent 13 days to look for legal assistance, and for preparation of the documents to be filed in court.

The founding affidavit is to the effect that the judgment of the District court was delivered on 29/12/2023, whereas on 23/01/2024, the applicant applied for the copies of judgment and decree for appeal purposes and obtained them on 02/02/2024 but was not given a copy of proceedings in time therefore, upon lodging his appeal electronically, it was rejected because it was not accompanied by the district court proceedings, as a result, he went back to the District court to ask for the proceedings and were availed to him on 23/02/2024 and on 7/03/2024, he lodged this

application electronically. The delay was caused by the district court to supply the necessary documents to applicant so that he could prepare sound grounds of appeal and lodge his appeal within the prescribed time.

In reply, the respondent submitted that basically, she does not object the application, since nowadays the speed of justice delivery is very high therefore, even the intended appeal will be expeditiously heard and determined. She ended up her submission saying the respondent is her son, thus she is not interested with endless cases.

Having considered the founding affidavit and having heard both parties, the issue for determination is whether the applicant has demonstrated sufficient cause for this court to exercise its discretion to grant extension of time.

The applicant has brought this application under Section 25 (1) (b) of the magistrates' Courts Act, [Cap 11 R. E. 2022] which provides that:

*"In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; **and the High Court may extend the time for***

***filing an appeal either before or after such period of thirty days has expired"***

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This principle was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227 that,


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

What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon party seeking extension of time to prove the relevant material in order to move the court to exercise its discretion. See **Oswald Masatu Mwizarubi versus Tanzania Processing Ltd**, Civil Application No.13 of 2010 CAT, (unreported).

There is no dispute that the law requires an appeal from the district court to the High Court to be filed within thirty (30) days from the day the judgment or order was delivered. In the present appeal, it is undisputed

that the judgment was delivered on 29/12/2023 while this appeal was filed on 07/3/2024, meaning there was delay of 36 days. Considering the fact that the applicant wrote a letter to the District Court requesting to be supplied with the copies of judgment, decree and proceedings so that he could prepare clear and sound grounds of appeal, and considering that he was not availed with the said documents within time, and since after being availed with the said documents, he promptly filed this application, I am satisfied that the applicant has demonstrated good cause for the delay to warrant this court to exercise its discretion to grant extension of time.

For that reason, I allow this application. The applicant is given a period of twenty one (21) days from the date of this order within which to file an appeal to this court. It is so ordered



E.L. NGIGWANA

JUDGE

30/04/2024

Order delivered this 30<sup>th</sup> day of April 2024, in the presence of Mr. Samwel Angelo learned advocate for the applicant, the respondent in person and Ms. Queen Koba, B/C.



E.L. NGIGWANA

JUDGE

30/04/2024