

TANZANIA / JUDGMENT

KATEPA SCAN

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUMBAWANGA SUB-REGISTRY
AT SUMBAWANGA MISC. CIVIL APPLICATION NO.11698 OF 2024 (Arising from Civil Appeal
No.12237 of 2024 High Court of Tanzania at Sumbawanga, and original Civil Case No.04 of 2022 of
the Resident Magistrates* Court of Sumbawanga, at Sumbawanga) BETWEEN IMMACULATA
CHAPANGA.... APPLICANT VERSUS CHARLES KATEPA
(TICHA)RESPONDENT Last order:* August 21, 2024 Ruling: August 30. 2024

RULING

NANGELA, J.: This is an application brought under Order XLIII Rule 2 of the Civil Procedure Code, Cap. 33 33 R.E. 2019 and Section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2019. It was brought by way of a chamber summons supported by an affidavit of the applicant. The applicant is seeking the following

orders:

1. That this Honourable Court be pleased to grant the applicant an extension of time to file a civil appeal out of time.
2. Cost to be provided for,
3. Any other relief (s) that this Honourable Court will deem fit and just to grant. When the parties appeared before this court for the hearing of this application, Ms. Neema Charles, learned advocate, Page 1 of 7 appeared for the applicant while Mr. Peter Kamyale appeared for the respondent. This Court ordered the parties to dispose of the application by way of written submissions. The learned advocates appearing for the parties duly complied with the orders of this court. In her submission, Ms. Charles, the learned counsel appearing for the applicant, urged this court to grant the application. She submitted that the same was filed after Civil Appeal No. 12237 of 2024 was struck out in May 2024 as it was found to-be incompetent. Adopting the contents of the supporting affidavit as forming part of her submission, she contended that the appellant has acted immediately and diligently after the ruling that struck out Civil Appeal No. 12237 of 2024 to file an application for an extension of time to file her appeal out of time. She relied on the Court of Appeal decision in the case of Eliakim Swai & Another vs. Thobias Karawa Shoo, Civil Application No, 02 of 2016.

According to Ms. Charles' submission, the failure to file the appeal in time was due to the fact the appeal was struck out for not being accompanied with a copy of the decree, and this was not a result of negligence. She contended that an advocate is a Page 2 of 7 human being and can as well make a mistake due to slip of mind. The days following the striking out of the matter, therefore, constitute a technical delay, she submitted. She relied on the case of Samwel Kobelo Muhuio vs. National Housing Corporation/ Civil Appl. No. 302 of 2017 (CAT) (unreported) to support her submission. For his part, Mr. Kamyale urged this court to dismiss this application with costs as it lacks merit. Adopting the respondent's counter-affidavit, he argued that the applicant had failed to provide enough evidence of a valid reason for the delay to support the approval of this application. He argued that although the categories of what constitute technical delay are never closed, an advocate's inaction is not a technical delay. He relied on the case of Filson Mushi vs. Jitegemee SACCOS Ltd., Civil Application No. 313/05 of 2021 (CAT) (unreported) to support his position. He submitted that the appeal was struck out for failure to attach a copy of the decree appealed against. Relying on the case of EXIM Bank (T) Ltd vs. Jacqueline A. Kweka, Civil Application No. 348/18 of 2020 (CAT) (unreported), he maintained a view that failure on the part of an advocate to act timely cannot constitute good cause for Page 3 of 7 enlargement of time. A further reliance was made on the case of TAWGLU on behalf of Omary Zubery & 576 Others vs, Ilala Municipal Council and 10 Others, Civil Application No.233/01 of 2023 [2024] TZCA (1ST August 2024). Based on the above and other cases, which I need not cite here, Mr. Kamyale urged this court to dismiss this application with costs. In her rejoinder submission, Ms. Charles rejoined that the failure to act in time was not due to negligence or lack of diligence as argued. She submitted that after the striking out, the advocate for the applicant has acted diligently. She argued, relying on the case of Zuberi Mussa vs. Shinyanga Town Council, Civil Application No. 3 Of 2007 (CAT) (unreported), that, not every mistake done by an advocate should be frowned upon to the detriment of the parties. To cement her position further, the learned counsel for the applicant rejoined that there are even times when, depending on the circumstances of each case, the court would grant an extension of time even where there is an element of negligence on the part of the applicant's advocate. She relied on the case of Yusuph Same and Another vs. Hadija Yusuph, Civil Appeal No. 1 of 2002 (CAT) (unreported). She thus urged this court to grant the application. Page 4 of 7 I have carefully considered the rival submissions made by the learned counsel for the parties. Granting an extension of time in an application like this one at hand, is a discretionary act on the part of the court based on whether there are sufficient reasons for the delay to act timely. I am also mindful of the Case of Dr. Reginald Abraham Mengi and Another vs. Muganyizi J. Lutagabwa and 2 Others, Consolidated Misc. Applications No. 198 of 2016 arid 214 of 2016 (unreported). In the case of the late Dr. Mengi (supra) this court held a view that, there is no hard and fast rule regarding judicious exercise of discretion. This, therefore, means that, such an exercise of the Court's discretion will largely depend on the circumstances of each case, and must be guided by the principles of justice, equity, and common sense. In this application, the applicant contends that the delay was purely a technical one the earlier appeal having been struck out for failure to attach a decree that was

being appealed against. For his part, the learned counsel for the respondent argued that such was an act of negligence. In my view, however, the argument raised by the counsel for the respondent, is misplaced. I hold that view because such an Page 5 of 7 argument befits the already past scenario: where this court struck out the earlier appeal. It cannot be raised in this application, which was filed promptly after the previous appeal was struck out. Put differently, I would say that the "sins" committed, in-respect of the previous appeal have been atoned for by it being struck out. That same argument cannot block this fresh attempt unless it is argued Otherwise and convincingly. I am not, at least convinced as of now that the same can be relied on. In the present application, the applicant is telling this court that her belated knock at the doors of this court was because the previous appeal, which was well filed in time, was struck out on technical grounds, and since she seeks to appeal afresh, she is already delayed, and the delay is based on the striking out of the earlier appeal. I think she has a point. In law, a technical delay is a sufficient ground to allow a litigant to apply for an extended period for her/him to act as the time lost was lost while she/he was in the corridors of the court. The cases of Abdul Hamis Kinyala vs. CRDB Bank Limited and another Misc. Land Application No. 63 of 2020 (unreported) and Fortunatus Masha vs. William Shija & another [1997] TLR 154 are all relevant to that fact. Page 6 of 7 That being said, I see no reasons why I should withhold the granting of this application. The applicant's delay being technical, I am persuaded to exercise the discretion vested in this court and allow the applicant to file her appeal out of time. The time granted is 14 days from the date of this ruling. For the reasons stated above, this application is hereby granted with costs as prayed. It is so ordered. DATED AT SUMBAWANGA ON THIS 30th DAY OF AUGUST 2024 m gh \ Page 7 of 7

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Prepared on 14 October 2026 · Esheria