

TANZANIA / JUDGMENT

KARIAKOO AUCTION MART

COURT
TANZLIIDECIDED
27 March 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-REGISTRY AT DAR ES SALAAM CIVIL APPLICATION NO. 19182 OF 2024 KARIAKOO AUCTION MART LIMITED APPLICANT VERSUS MWACHE MASHAKA YAHAYA DYANGA (Administrator of the estate of the late MASHAKA DYANGA) 1ST RESPONDENT JUMA S. SAMBA 2ND RESPONDENT SAID HAMZA NGOHENGO (Administrator of the estate of the late ABDULWAHAB HAMZA) 3RD RESPONDENT NASSORO SAIDI 4TH RESPONDENT MOHAMED MMANDE 5TH RESPONDENT SIASA MOHAMED 6TH RESPONDENT ANWAR JUMA YAGGA (Administrator of the estate of the late RAMADHAN J. YAGGA) 7TH RESPONDENT SHAFFII SALEHE DUNDA (Administrator of the estate of the late ABDUL S. DUNDA) 8TH RESPONDENT (Arising from Civil Case No. 86 of 2008)

RULING

21st and 27th March 2025 KISANYA, J.: This application is brought under section 14(1) of the Law of Limitation Act [Cap 89, R.E. 2019], section 96 of the Civil Procedure Code [Cap. 33, R.E. 2019], and section 11(1) of the Appellate 1 Jurisdiction Act [Cap.141, R.E. 2019]. The applicant, Kariakoo Auction Mart, seeks an extension of time to apply for rectification of clerical errors in the judgment of this Court in Civil Case No. 86 of 2008, delivered by His Lordship Mwandambo, J (as he then was) on 26th February 2016. The applicant further prays for the correction of party names in the judgment to align with the court record, an extension of time to file a Notice of Appeal against that judgment, and any other relief the Court finds appropriate. In support of the application, an affidavit and supplementary affidavit sworn by Edward Peter Chuwa, advocate for the applicant, have been filed. These affidavits set forth the grounds for the requested extension and detail the circumstances that led to the delay. For a clear understanding of the instant matter, a brief background is as follows: This Court, on 26th February 2016, issued a judgment and decree against the applicant in Civil Case No. 86 of 2008. Feeling aggrieved by the decision, she filed a Notice of Appeal and requested copies of exhibits and proceedings on 18th July 2019 to aid in preparing the record of appeal. Subsequently, on 16th September 2019, the applicant filed the Memorandum and Record of Appeal before the Court 2 of Appeal, where the appeal was registered as Civil Appeal No. 234 of 2019. During the preparation of arguments for the appeal hearing set for 3rd June 2024, the applicant's counsel noticed a significant clerical oversight.

While the trial proceedings correctly recorded that four plaintiffs namely, Mashaka Dyanga, Abdulwahab Hamza, Ramadhan J. Yagga, and Abdul S. Dunda had passed away and were replaced by their legal representatives Mwache Mashaka Yahaya Dyanga, Said Hamza Ngohengo, Anwar Juma Yagga, and Shafii Salehe Dunda, this substitution was not reflected in the judgment and decree, rendered both documents defective. In addition, the Notice of Appeal and the subsequent Memorandum and Record of Appeal contained the same error by listing the deceased plaintiffs instead of their substituted administrators. As a consequence of the stated defects, the Court of Appeal struck out the applicant's appeal for incompetence on 18th June 2024. Still resolute in challenging the judgment and decree in Civil Case No. 86 of 2008, the applicant filed this application seeking the reliefs as stated earlier. 3 Regarding the reasons for the delay, the applicant has stated that: One, the error affecting the judgment and decree was only discovered while preparing for the appeal hearing, nearly eight (8) years after the judgment was delivered. Two, the error arose due to a clerical oversight by the Court, and neither party is responsible for it. Three, as the appeal process must now restart, and the time for filing a fresh Notice of Appeal has already lapsed, an extension is necessary. Four, the delay in filing the Notice of Appeal is technical rather than a result of negligence or inaction by the applicant. Five, granting the requested orders will not prejudice the respondents, as the decree cannot be executed in its current defective state. Six, after delivery of the Court of Appeal's ruling, the applicant's officers were engaged in consultations to prepare this application. Based on the above reasoning, I find the application to be incompetent and strike it out accordingly. Each party shall bear its own costs. In the virtual hearing, Mr. Edward Chuwa, learned Advocate, appeared on behalf of the applicant, whereas Ms. Nasra Rajabu Nakapala, also learned Advocate, represented the respondents. 4 When given the floor, Mr. Chuwa adopted the supporting affidavit and submitted that the delay was caused by a technical delay, namely, the incorrect recording of some respondents' (the then plaintiffs) names in the judgment. He further contended that due to this defect, the applicant proceeded to file a notice of appeal and subsequently an appeal, only for the error to be discovered at the hearing stage. In light of this, Mr. Chuwa moved the Court to grant the application, allowing the applicant to file a fresh notice of appeal. To substantiate his argument, the learned Advocate relied on the case of Bank M Tanzania (Limited) vs Enock Mwakyusa, Civil Application No. 520/2017, (Civil Application No. 520 of 2017) [2018] TZCA 291 (25 October 2018) where the Court of Appeal held that technical delay is explicable and excusable. In response, Ms. Nakapala categorically stated that she had no objection to the application. She even urged the Court to expedite its ruling so that the respondents could proceed with the necessary legal steps. After due consideration of the chamber summons, supporting affidavit, supplementary affidavit, counter affidavit and submission from 5 the parties' counsel, the Court is called upon to determine the merit or otherwise of this application. I have considered at the outset that parties are at one that, the judgment of this Court in Civil Case No. 12 of 2018 has clerical error in respect of the names of the some defendant. It is evident from the proceedings that upon demised of Mashaka Dyanga (first plaintiff), Abdulwahab Hamza (third plaintiff), Ramadhani J. Yagga (seventh plaintiff), Abdul S. Dunda (eighth plaintiff), and their legal representatives namely Mwache Mashaka Yahaya Dyanga, Said Hamza Ngohengo, Anwar Juma Yagga, and Shafii Salehe Dunda, were joined to replace. However, this fact was not reflected both

in the judgment and decree. Pursuant to sections 95 and 96 of the Civil Procedure Code, errors in a judgment, decree, or order may be corrected at any time, either by the Court on its own motion or upon the application of any party. The underlying rationale for this provision is to ensure that court records accurately reflect the true state of affairs. In *Jewels & Antiques (T) Ltd v. National Shipping Agencies Co. Ltd* [1994] TLR 110, the Court of Appeal underscored that the phrase “at any time” should be interpreted literally, subject to the rights of the parties. It was further held that there is no justification for imposing a time limit on the correction of minor clerical or arithmetical errors that do not affect the substance of the judgment. Guided by this legal position, I find no necessity in addressing the first prayer for an extension of time to file an application for correction of the judgment. Instead, I proceed to grant the second prayer by issuing a separate order for the correction of the judgment, ensuring that the names of the first, third, seventh, and eighth plaintiffs are accurately recorded as MWACHE MASHAKA YAHAYA DYANGA (Administrator of the estate of the late MASHAKA DYANGA), SAID HAMZA NGOHENGO (Administrator of the estate of the late ABDULWAHAB HAMZA), ANWAR JUMA YAGGA (Administrator of the estate of the late RAMADHANI J. YAGGA), and SHAFFII SALEHE DUNDA (Administrator of the estate of the late ABDUL S. DUNDA), respectively. Turning to the third prayer for an extension of time to file a notice of appeal, section 11(1) of the Appellate Jurisdiction Act, as cited in the chamber summons, vests the High Court, with discretionary powers to extend the time for giving notice of intention to appeal. This discretion applies even if the prescribed time for filing the notice has already lapsed. However, this discretion is not absolute; it must be exercised judiciously. In doing so, the Court must be satisfied that the applicant has demonstrated a good cause for failing to lodge the notice of appeal within the required timeframe. It is undisputed in this case that the applicant filed the notice of appeal within the appropriate time frame. Afterward, the applicant timely pursued an appeal against the impugned judgment and decree, but it was struck out by the Court in Civil Appeal No. 234 of 2019 due to incompetence resulting from errors in the judgment and decree. As a consequence, the applicant's failure to file the notice of appeal is attributable to a technical delay, which, as Mr. Chuwa correctly submitted, is excusable and justifiable. This stance finds support in *Bank M Tanzania Limited* (supra), where the Court of Appeal, cited its earlier decision in *Fortunatus Masha v. William Shija and Another* [1997] TLR 154, where it was reaffirmed that: “A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted.” In applying the legal position from the cited case, I find that the applicant has provided an acceptable explanation for the delay up to 18th June 2024, when Civil Appeal No. 234 of 2019 was struck out by the Court of Appeal. I am, however, mindful of the established principle that each day of delay must be accounted for in order to give meaning to the provisions on time limitation. In line with this, the applicant was required to explain the delay between 18th June 2024, when Civil Appeal No. 234 of 2019 was struck out, and 6th August 2024, when the present application was filed. In paragraphs 3, 4, 5, 6, and 7 of the supplementary

affidavit, the applicant stated that the application was prepared, dated, and signed on 28th June 2024, just ten days after the Court of Appeal's ruling. However, the application could not be filed because the case in question had not yet been registered in the Judiciary Case Management System. 9 It was further explained that despite numerous follow-ups, both physically and through formal letters to the court registry and the Deputy Registrar, the case was only registered on 5th August 2024. As a result, the applicant was able to file the application on 6th August 2024. It is worth noting that these facts deposed in the supplementary affidavit were not contested by the respondent. From the evidence provided, it is evident that the applicant took prompt action in pursuing the matter after the striking out of Civil Appeal No. 234 of 2019 on 18th June 2024. Therefore, I am satisfied that the delay during the period in question has been adequately explained, justifying the extension of time for filing a notice of appeal as sought in the third prayer. In the event, I find merit in the application and grant it as follows:

1. The clerical errors in the judgment and decree of this Court dated 26th February 2016 in Civil Case No. 86 of 2008 are hereby corrected. A separate order shall be issued to reflect the correct names of the first, third, seventh, and eighth plaintiff as MWACHE MASHAKA YAHAYA DYANGA (Administrator of the estate of the late MASHAKA DYANGA), SAID HAMZA NGOHENGU (Administrator of the estate of the late ABDULWAHAB HAMZA), ANWAR JUMA YAGGA (Administrator of the estate of 10 the late RAMADHANI J. YAGGA), and SHAFFII SALEHE DUNDA (Administrator of the estate of the late ABDUL S. DUNDA), respectively, and the said order shall be read together with the judgment and decree dated 26th February 2016.
2. The applicant is granted a period of thirty (30) days, starting from the date of this ruling, within which to file the notice of appeal against the judgment and decree of this Court in Civil Case No. 86 of 2008.
3. Each party shall bear its own costs as prayed. It is so ordered. DATED at DAR ES SALAAM this 27th day of March 2025. . S.E. KISANYA JUDGE Delivered via virtual court system this 27th day of March 2025, in the presence of Mr. Edward Chuwa, learned Advocate for the applicant, Ms. Nasra Rajabu Nakapala, learned Advocate for the respondents and Ms. Zawadi-RMA. S.E. KISANYA JUDGE 27/03/2024 11

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Prepared on 13 October 2026 · Esheria