

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 160/13 OF 2022

MARIAM MBELE.....APPLICANT

VERSUS.

FIDELIS MAWONA.....RESPONDENT

(Application for extension of time within which to serve the Record of Appeal on the Respondent against the Ruling of the High Court of Tanzania at Iringa

(Kente, J.)

dated the 22nd day of October, 2019

in

(PC) Matrimonial Appeal No. 01 of 2018.

RULING

13th & 21st April, 2022

MWAMPASHI, J.A.:

This is an application for extension of time within which to serve the respondent with a copy of the record of an appeal filed to the Court against the decision of the High Court of Tanzania at Iringa (Kente, J. as he then was) in Matrimonial Appeal No. 1 of 2018 dated 22.10.2019. The application is made by a notice of motion under Rules 10 and 48 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is supported by an affidavit sworn by Mr. Moses Ambindwile,

learned advocate for the applicant. On his part, the respondent has filed an affidavit in reply sworn by his advocate one Mr. Batista John Mhelela.

According to the supporting affidavit, after lodging the record of appeal at Iringa Court Registry on 06.01.2022, a copy of the record could not be served on the respondent because his address for service was not known as the respondent had not lodged or served the applicant with his address for service as required by rule 86(1) of the Rules. It is insisted that the respondent had failed to do so despite the fact that a notice of appeal had earlier been duly served on him. These averment in the supporting affidavit have not been denied in the affidavit in reply.

Bearing in mind that the application had been brought under the certificate of urgency, when the application came up for hearing, the learned advocates for the parties, Messrs. Moses Ambindwile for the applicant and Batista John Mhelela for the respondent who were at Arusha and Njombe

respectively, were connected to the Court via video link. The hearing did therefore proceed through video conference facilities.

At the outset, Mr. Mhelela intimated that the respondent was not opposing the application. The application having not been opposed, Mr. Ambindwile sought to adopt the notice of motion and the supporting affidavit and prayed for the application to be granted.

Notwithstanding the fact that the application is not opposed, the issue to be determined by the Court is still whether or not the application is meritorious. However, before the substance of the application is dealt with, let it be restated that the power of the Court to enlarge time is both wide and discretionary. Rule 10 of the Rules under which the Court derives such powers provides thus:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized

or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time so extended”.

As to what amounts to *sufficient* or *good cause*, it was held by the Court in ***Osward Masatu Mwizarubi vs. Tanzania Fish Processing Ltd***, Civil Application No. 13 of 2010 (unreported) that;-

“What constitutes good cause cannot be laid down by any had and fast rules. The term ‘good cause’ is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion.”

While it is not possible to lay down an invariable or constant definition of good cause so as to guide the exercise of the Court’s discretion in this regard, the Court must consider the merits or otherwise of the excuse cited by the applicant for failing to meet the limitation period prescribed for taking the

required step or action. See- **Mgombaeka Investment Company Limited and Two Others v. DCB Commercial Bank PLC**, Civil Application No. 500/16 of 2016 (unreported). In determining whether good cause has been shown, regard should also be given to whether the application for extension of time has been filed promptly and also whether the applicant acted diligently. See- **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported).

Further, in ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) vs. Mohamed Mshindo***, Civil Application No. 28/2017 (unreported) this Court had the following to say;

"Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stand to suffer

If time is extended, whether the applicant was diligent, whether there is a point of law of sufficient importance such as the legality of the decision sought to be challenged”.

Guided by the foregoing principles, I have dispassionately considered reasons given for the delay and came to a considered view that the application is meritorious. I am satisfied that the applicant has given reasonable cause as to why he could not serve the copies of the record of appeal on the respondent within the prescribed period of seven (7) days after lodging the record as required by rule 97(1) of the Rules. It is obvious that the delay in serving the respondent was not due to the applicant's negligence or inaction. The delay was attributed by the fact that the respondent had not given his address for service as required by rule 86 (1) of the Rules, hence making his address for service being not known to the applicant. I therefore find the application with merit and to my considered view allowing the record of appeal to be served on

the respondent out of time will not occasion any failure of justice to the respondent.

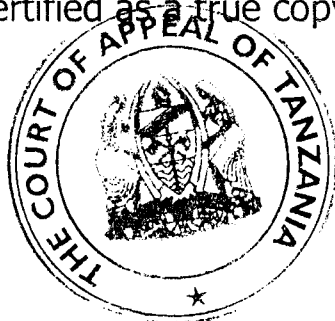
For the above given reasons, the application is granted. The applicant is directed to serve the copy of the record of appeal on the respondent within seven (7) days from the date of delivery of this ruling. Considering the circumstances of this case, no order is made as to costs.

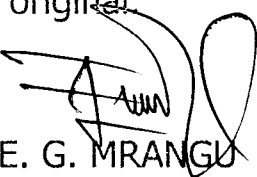
It is so ordered.

DATED at DAR ES SALAAM this 19th day of April, 2022.

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Ruling delivered this 21st day of April, 2022 in the presence of Mr. Moses Ambindwile, counsel for the Applicant who also holding brief for Mr. Batisha John Mhelala, counsel for the Respondent is hereby certified as a true copy of the original.




E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL