

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 418/01 OF 2021**

**MARIAMU JUMA MOHAMEDI..... APPLICANT**

**VERUS**

**MARIAMU NASSORO KIPINDUKA.....1<sup>st</sup> RESPONDENT**

**HALIFA HAMISI UNGAUNGA.....2<sup>nd</sup> RESPONDENT**

**(Application for Extension of Time to file an Application for Revision  
against the Judgment and Decree of the High Court of Tanzania  
at Dar es Salaam)**

**(Miyambina, J.)**

**dated the 17<sup>th</sup> May, 2019**

**in**

**PC. Civil Appeal No. 63 of 2018**

**.....**

**RULING**

**22<sup>nd</sup> February & 10<sup>th</sup> March, 2023.**

**FIKIRINI, J.A.:**

This is an application for extension of time to lodge an application for revision to this Court against the decision of the High Court dated the 17<sup>th</sup> May, 2019, in PC. Civil Appeal No. 63 of 2018. The application is by way of notice of motion predicated on rule 10 of the Court of Appeal Rules, 2009 (the Rules) and supported by the applicant's duly affirmed

affidavit and written submission filed to elaborate further on the kernel of her application. On the first respondent's part, she filed an affidavit in reply and written submission opposing the application. In contrast, the second respondent filed his affidavit in reply supporting the application.

Exploring the factual setting giving rise to the application, it is necessary to understand the contentious issues. The facts are as follows:- Before the Mbagala Primary Court, Temeke District, in Matrimonial Cause 39 of 2017, the first respondent filed for divorce and the division of matrimonial properties. Dissatisfied with the decision, she appealed to the District Court of Temeke at Temeke in Civil Appeal No. 50 of 2017. The District Court granted the appeal and reversed the Primary Court judgment by ordering the equal division of the matrimonial properties.

Bemused, the second respondent, appealed to the High Court, challenging the decision in PC. Civil Appeal No. 63 of 2018. The High Court dismissed the appeal and confirmed the District Court decision. Initially, the second respondent lodged a notice of appeal to this Court

on 28<sup>th</sup> May, 2019 but changed his mind and instead filed an application for review before the High Court, registered as Civil Review No. 6 of 2019. The application for review was dismissed, and the High Court decision in PC. Civil Appeal No. 63 of 2018 was confirmed. Reverting to his intention to appeal the decision to this Court, the second respondent applied for leave to appeal in Miscellaneous Civil Application No. 541 of 2020. The High Court, on 29<sup>th</sup> July, 2021, dismissed the application.

To the first respondent's surprise, the applicant emerged and lodged this application, contending that after being informed on 3<sup>rd</sup> September, 2021 by her husband, the second respondent, on what had transpired, and availed with the documents, she opted to apply for extension of time to file for revision.

On the date set for the hearing, all three appeared in person. The applicant and the first respondent, accompanied by Mr. Robert Kipingili and Mr. Antipas Lakam, learned advocates appeared representing the applicant and the first respondent. The second respondent appeared unrepresented.

Addressing their positions for and against the application, they had this to submit, starting with Mr. Kipingili. He began by adopting the notice of motion, affidavit, and written submission filed to form part of his submission supporting the application. Besides narrating what transpired when the applicant became aware of the occurrences, he urged for the grant of the application, arguing that the applicant was not a party to all those proceedings. Revision, therefore, seemed to be the right approach. To support his submission, he cited the case of **The Attorney General v. Maalim Kadau & 16 Others** [1997] T. L. R 69.

Mr. Lakam, in reply, also preceded his submission by adopting the affidavit in reply and written submission filed. Opposing the grant of the application, he contended that no good cause had been shown. Since in the ordinary setting for a couple who lived together and had joint properties, the applicant was supposed to be a witness in the proceedings before the lower court. However, nowhere in her affidavit had the applicant state owning the alleged properties. Her averment would have shown her infringed right, of which, if this application is declined, she would be at a loss.

Mr. Lakam extended his submission, stating that the second respondent was using the applicant as a shield to get relief; after failing to follow the proper procedure in appealing the decisions not in his favour. He also challenged the applicant for not indicating in her affidavit if she ever sought to peruse the court record regarding the judgments she attached to her affidavit.

Insisting that the applicant has failed to show a good cause, he cited the case of **Mega Builders Limited v. D. P. I. Simba Limited**, Civil Application No. 319/16 of 2020 (unreported). And he wound up saying this application is essentially the second respondent trying to pursue his appeal through the back door. He thus urged for the same to be dismissed with costs.

In a brief rejoinder, Mr. Kipingili maintained that the applicant had already stated how she came across the information. That it was from her husband, who availed her with the documents about the decisions, which led her to lodge the present application.

Mr. Kipingili challenged Mr. Lakam's submission for proceeding to argue the application for revision at this stage prematurely and not opposing the application for extension of time. Reiterating his earlier submission, he prayed for the grant of the application as the applicant acted promptly right after getting the information.

I have dispassionately considered the rival submissions from the counsel for the parties. Before I proceed, I wish to state that it is trite law that an application for extension of time is entirely at the court's discretion to grant or refuse it. This discretion, however, has to be exercised judicially, and the overriding consideration is that there must be good cause for so doing.

Even though what amounts to "good cause" has not been defined but from decided cases, several factors must be considered, including whether or not the application has been brought promptly, a valid explanation for the delay, and a lack of diligence on the applicant's part. The decided cases are such as **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda** - Civil

Application No. 6 of 2001, **Lyamuya Construction Company Limited v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, **Karibu Textile Mills Limited v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Zito Zuberi Kabwe & 2 Others v. The Attorney General**, Civil Application No. 365/01 of 2019, **Mbogo v. Shah** (1968) EA cited by Mr. Lakam and **Yusufu Same and Another v. Hadija Yusufu**, Civil Application No. 1 of 2002 (unreported) cited by Mr. Kipingili in their written submission.

In **Mbogo's** case (supra), the Court held:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal, and the degree of prejudice to the defendant if time is extended."*

Weighing the above stated principles against the application before me, I am convinced that the applicant has ably explained what led to her delay in taking appropriate action. First, she was not part of the proceedings that took place in the lower courts prior to this application. I have no reason to dispute this assertion as the records of proceedings are clear and do not reflect the applicant's name, confirming she was not a party.

Second, in paragraph 7 of her affidavit, the applicant stated that she was unaware of what was happening until 3<sup>rd</sup> September, 2021, when her husband (second respondent) informed her. The second respondent, apart from admitting the contents of paragraphs 1, 2, 3, 4, 5, and 6 of the applicant's affidavit, in paragraph 4, specifically admitted the contents of paragraphs 7 and 8 of the applicant's affidavit. This is what he averred in paragraph 4 of his affidavit in reply:-

*"That I admit the contents of paragraphs 7 and 8 of the affidavit. **I further state that I did not initially disclose to the applicant the pendency of various court proceedings between the 1<sup>st</sup> respondent and me since***



***I did not want to vitiate my marriage ties with the applicant."*** [Emphasis added]

The contents of this paragraph have not been disputed. Mr. Lakam's assertion that in the ordinary setting, the couple who were living and jointly owned properties as the applicant and the second respondent, the applicant ought to have been a witness in the lower court. While that could be true, but cannot be the only factor to be considered in the grant or refusal of this application. This factor must, in my view, be weighed against other factors. Moreover, examining that fact closely at this juncture will be premature. Third, in paragraph 4 of her affidavit in reply, the first respondent disputed the contents of paragraphs 2, 3, 4, and 5 of the applicant's affidavit. The only way the applicant could strictly prove what she averred in those paragraphs is if she could be heard. And that is the gist of this application. Insinuating that the second respondent was trying to access this Court and pursue his appeal, while plausible, I find it untimely to conclude so without evidence.

A fundamental principle of natural justice requires a right to be heard before any adverse action is taken against a party always be observed. In **Mbeya-Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] T. L. R. 251, the Court stressing on the right to be heard, held that:-

*"The right of a party to be heard before an adverse action or decision is taken against such a party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of the principles of natural justice."*

In the present application, properties worth millions of shillings are at stake. And according to the applicant, as averred in paragraph 4, they have been blessed with four (4) issues, and in paragraph 5, her marriage to the second respondent still subsists. This, in my view, answered Mr. Lakam's submission that the applicant has not stated

what rights of hers had been infringed. Therefore, by denying the applicant to exercise her right to be heard while she has made an effort to move the Court albeit promptly, the latter will be dodging its duty and obligation of protecting people's rights.

From the above discussion, I find the applicant has been able to advance a good cause why she had to file this application for extension of time. I thus proceed to grant the application for extension of time to file for revision within sixty (60) days from the date of this ruling. Costs in due cause.

It is so ordered.

**DATED at DAR ES SALAAM this 8<sup>th</sup> day of March, 2023.**

P. S. FIKIRINI

**JUSTICE OF APPEAL**

The Ruling delivered this 10<sup>th</sup> day of March, 2023 in the presence of Mr. Robert Kipingili, learned counsel for the Applicant and 1<sup>st</sup> and 2<sup>nd</sup> Respondent in person, is hereby certified as a true copy of the original.



  
R. W. CHAUNGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**