

IN THE HIGH COURT OF TANZANIA
AT MOSHI
MISC. CIVIL APPLICATION NO. 18 OF 2007
[C/F (PC) CIVIL APPEAL NO. 27/2001]
[ORG. MWANGA P/C CIV.CASE NO. 65/2000]
ALLY MTAITA ----- APPLICANT
VERSUS
MWANAHAWA SELEMAN -- RESPONDENT

R U L I N G:

HON. JUNDU, J.

This is an application by the Applicant for an extension of time to file an appeal against the decision of the District Court of Mwanga in Civil Appeal No. 27 of 2001 which he had lost. The said appeal was determined by the said court on 8/5/2002. He has made the Chamber Summons under Section 25 (1) (b) of the Magistrates' Courts Act, 1984. The said Chamber Summons is supported by his affidavit setting out the grounds for the application.

The Applicant in his affidavit deponed that the said appeal originated from original Civil Case No. 65 of 2000 of Mwanga Primary Court. It was on a land dispute which he lost to the Respondent. Being aggrieved he appealed to the District Court of Mwanga in Civil Appeal No. 27 of 2001 which he lost on 8/5/2002.

In his affidavit and arguments before this court, the Applicant contends that he was aggrieved by the decision of the District Court of Mwanga in Civil Appeal No. 27 of 2001 but could not appeal in time as he had a sick child and a sick wife to attend at the KCMC. In the affidavit, he deponed that he had to attend the sick child during the period of the original case and the first appeal. He further

deponed that in the year 2003 he had to attend his sick wife todate in addition to the sick child who died in the year 2006. However, in his presentation before this court, the Applicant alleged that he attended the said sick child and sick wife in the year 2005.

On the other hand, the Respondent in her Counter Affidavit and reply submission contends that the inordinate delay of the Applicant in the matter is not justifiable by any reason. As to the alleged sick child of the Applicant, she contends that the same does not hold water because the hospital chit annexed to the affidavit of the Applicant shows that the said child was attended on 17th November, 2005, while the judgment of the District Court was delivered on 8th May, 2002. This is a period of three years since the delivery of the said judgment. She contends that the Applicant's son died in July, 2006 but this it could not justify delay of four years on the Applicant to file his intended appeal.

As to the Applicant's sick wife, the Respondent contends in her Counter – Affidavit and submission that Annexure “D” to the affidavit of the Applicant shows that the said wife was admitted at the hospital on 12th January, 2005 while the judgment of the District Court of Mwanga was delivered on 8th May, 2002. She therefore contends that the Applicant has no good reason to justify his delay to file his appeal as well as this application between the period from May, 2002 to January, 2005 leave alone the year 2007 in which he filed the present application.

In his Reply to Counter affidavit, the Applicant avers that his delay to file his appeal has been occasioned by series of unfortunate events of longtime illness (cancer) of his beloved child and long illness (abdomens) of his wife who is allegedly still suffering todate. He contends that the child who is now deceased suffered from cancer in the year 2000 but the Applicant did not reveal the same earliest due to the nature of the disease. He took her to various traditional healers until 17th November, 2005 when he decided to take her to KCMC referral hospital.

He contends that the said fact prevented him from making a follow up to lodge his appeal on time as he was making all possible means as a father to rescue the life of his child. He further contends in his Reply to Counter-affidavit that the sickness of his wife was a continuation of series of unfortunate events which is another factor for Applicant's delay to file his appeal. He contends that while his child was sick, his wife had undergone three surgical operations of her abdomen something which prevented the Applicant from lodging his appeal in time. He contends that the child died in July, 2006 which was followed by a period of mourning after long effects of serving her life. He alleges that the intended appeal has a number of points of law worth consideration by the second appellate court.

I have carefully read the affidavit filed by the Applicant in support of the application as well as the Counter Affidavit filed by the Respondent opposing the application as well as the Reply of the Applicant to the Counter affidavit of the Respondent. I have also carefully considered the arguments of the parties before this court.

In this application, the Applicant is required to demonstrate sufficient cause for the delay for the application for extension of time as well as for the intended appeal.

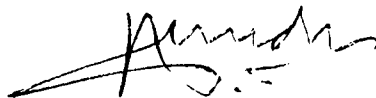
Now, the Applicant, in his affidavit and in his submission has mainly attributed his delay for the filing the appeal in time due to the alleged sickness of his child who is now deceased as well as to the sickness of his wife. However, the only medical evidence annexed to his affidavit shows that the child was attended at KCMC on 17/11/2005 and his wife was admitted at the same hospital on 12/1/2005. On the other hand, the Judgment of the District Court of Mwanga was delivered on 8th May, 2002. Though, the Applicant has tried to show that the sickness of his child and his wife had occupied him for the period since 2000 to 2007, there is no medical evidence either in the affidavit of the Applicant or in his

submission before this court to show that the said child and the said wife were undergoing treatment for all the said period other than on 17/11/2005 and on 12/1/2005 as above mentioned. Therefore, the Applicant in my considered view has not accounted for his delay to lodge his appeal and this application for the period of time other than 17/11/2005 and 12/1/2005. The Applicant has not accounted for his delay for filing his appeal and this application for the period from 8th May, 2002 when the District Court of Mwanga delivered its Judgment to 9/5/2007 when he filed this application other than on 17/11/2005 and 12/1/2005.

Therefore the contention of the Applicant, that he was attending his sick child and sick wife for the entire period from 2002 to 2007, hence prevented from lodging his appeal in time, is not supported by medical evidence annexed to his affidavit. His delay to file his appeal in time as well as this application has not been sufficiently accounted for. Therefore, I am in complete agreement with the Respondent that the inordinate delay of the Applicant in this matter is not justifiable.

The averment of the Applicant in his affidavit that the intended appeal has points of law worth consideration by the second appellate court does not make this application meritorious given that the Applicant has not demonstrated sufficient cause for his delay to lodge his appeal in time as well as this application.

In the upshot, I hold that the application has no merit. The same is hereby dismissed with costs. It is so ordered.

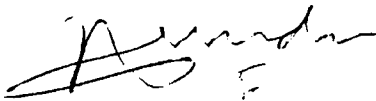


F.A.R. JUNDU

JUDGE

16/11/2007

Right of Appeal if Explained.



F.A.R. JUNDU

JUDGE

16/11/2007

16.11.2007

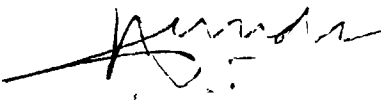
Coram: F.A.R. Jundu, J.

For the Applicant: present

For the Respondent: present

C/C: Muyungi

Court: Ruling delivered in the presence of the Applicant and in the presence of the Respondent.



F.A.R. JUNDU

JUDGE

16/11/2007

AT MOSHI