

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO 138 of 2009

PILLY SAIDI.....APPLICANT

VS

SAMSON NYALOMBA.....RESPONDENT

Ruling

Date of last Order: 04-04-2011
Date of Ruling: 11-04-2011

JUMA, J.:

This is an application by Pilly Saidi which she brought by way of Chamber Summons under section 14-(1) of the **Law of Limitation Act, Cap 89** and section 95 of the **Civil Procedure Code, Cap. 33**. The applicant is seeking an extension of time within which to file an appeal out of time against the Judgment and Decree of the District Court of Ilala ~~was~~ delivered on 13th August 2008 by Mrs. Chande-**DM**.

The background to this application traces back to the District Court where the applicant had filed the Matrimonial Cause No. 34 of 2006 petitioning for dissolution of her marriage to the respondent Samson Nyalomba. The petitioner in addition wanted

an order for distribution of the couple's matrimonial assets. Dissatisfied with the decision of the District Court on distribution of the matrimonial assets, the applicant preferred an appeal to this court when she filed Civil Appeal Number 208 of 2008. But before Mwaikugile, J. of this court could proceed with Civil Appeal Number 208 of 2008; he noted that the judgment of the district court against which the applicant had grounded his appeal was delivered on 13th August 2008 whereas the decree extracted from the judgment of the district court was dated on 7th November 2008. Mwaikugile, J. found and held that this difference on dates was an anomaly which made the Civil Appeal Number 208/2008 before him incompetent in terms of Order XXXIX Rule 1 (1) and Order XX Rule 7 of CPC. The appeal by the applicant was subsequently struck out on 13th August, 2009.

As indicated earlier, Civil Appeal Number 208 of 2008 was struck out on 13th August 2009 and it took the applicant more than three months till on 23rd November 2009 to file this application seeking an enlargement of time. The reasons the applicant has advanced to explain why she could not appeal against the decision of the district court within time prescribed are to be found in paragraphs 6, 7 and 8 of her affidavit she filed in support of this application. These reasons basically are-

- i) she had filed in this court her Civil Appeal Number 208 of 2008 against the decision of the District Court but her appeal was unfortunately struck out;

- ii) her intended grounds of appeal which she has annexed to this application stand an overwhelming chance of success.

In her supporting written submissions, the applicant implored this court to find that she had made out sufficient reasons to justify an extension because the time she took to prosecute her Civil Appeal Number 208 of 2008 had taken much of her time before that appeal was struck out by this court.

This application seeking an extension of time was opposed by the respondent Samson Nyalomba who swore a counter affidavit on 21st September 2010 basically insisting that the chances of this application succeeding are very minimal because the trial district court magistrate had entered an ex parte judgment against him.

I have considered the affidavits together with above submissions. I am of the opinion that in the interests of justice the applicant should be granted leave to pursue an appeal to this court. I am persuaded by the case of **Martha Daniel v Peter T Nko 1992 TLR 359** where Mroso J. (as he then was) held that a plea by a lay person that he or she be allowed to file an appeal out of time in an appropriate court after his or her earlier appeal has been struck out or is voluntarily withdrawn from the High Court because it had been wrongly filed there, but timely, constitutes a sufficient reason. It is evident that both the applicant and the respondents are lay persons. Both were not represented by learned counsel. Records


also show that in preparation of her pleadings, this applicant received legal assistance of the Women's Legal Aid Centre. I have also taken into account the fact that the applicant had already set her appeal into motion when she filed her Civil Appeal Number 208 of 2008 before it was struck out by Mwaikugile, J.

From the foregoing, the applicant has assigned sufficient reason to explain what prevented her from lodging an appeal within the prescribed period and is hereby granted 14 days within which lodge her fresh appeal. No order is made on costs.

It is ordered accordingly.


I.H. Juma
JUDGE
11-04-2011

Delivered in Court Chambers in the presence of: **Pilly Saidi (the Applicant) and in the absence of the Respondent.**


I.H. Juma
JUDGE
11-04-2011

