

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

PC. CIVIL APPEAL NO. 19 OF 2017

(Originating from the Decision of Kinondoni District Court

in Misc. Civil Application No. 14 of 2016)

HAMISI SAID @ MINAZI.....APPELLANT

VERSUS

ZUHURA MOSHI @ MBULI..... RESPONDENT

JUDGMENT

MKASIMONGWA, J.

Before the Primary Court of Kinondoni District at Kinondoni, ZUHURA MOHAMED (Respondent) petitioned the Court against HAMISI SAID MINAZI (Appellant) for divorce and maintenance of their children. The matter was determined on 22/7/2015 in favour of the Respondent. Aggrieved by the decision the appellant did appeal to the District Court. In deciding the Appeal (Matrimonial Appeal No. 32 of 2015) the District Court, in the decision delivered on 13/1/2015, found the same to have been filed out of the statutory time and that it was so filed without leave of the court. It was consequently dismissed. Later on 14/3/2016, the Appellant came to the District Court with an Application for extension of time within which to Appeal. Again he was not successful, as the application was dismissed for

failure by the Applicant (Appellant in this Appeal) to exhibit to the court sufficient cause for the delay.

This is an appeal by the appellant against the decision of the District Court dismissing the application for extension of time. In the appeal the Appellant has two grounds that is:

1. That the trial magistrate erred in law and fact by not considering the Appellant's reasons for leave.
2. That the trial magistrate erred in law and fact by not granting the appellant leave to appeal out of time,

When the matter came up for hearing parties appeared in person. Strangely upon being invited to argue the matter, the parties engaged their time arguing on why the decision of the Primary court and specifically for an order for maintenance of their issues should be or not vacated. This was actually being not the case before the court.

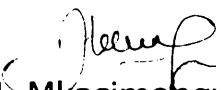
I have gone through the record of the trial court and in particular the affidavit filed by the Applicant supporting the chamber summons. In the affidavit the Appellant averred to the effect that he was the Appellant in Kinondoni District Court Matrimonial Appeal No. 31 of 2015 emanating from the decision delivered on 22/7/2015 by Kinondoni Primary Court in Matrimonial Cause No. 1 of 2015 to which he was the Respondent. The Appeal was filed on 16/10/2015 after he had lodged a Notice of Appeal sometime on 27/7/2015 and that the same was dismissed on 13/1/2015 for being time barred. He concluded by averring that it will be wise and

prudent that the applicant be granted extension of time to continue with Matrimonial Appeal No. 32 of 2015.

Under the law (Section 20 (4) of the Magistrates Court Act, (Cap. 11 R.E 2002) - the MCA, an appeal to the District Court shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought. In terms of Section 20 (4) (a) of the MCA, the District Court may extend the time for filing an appeal either before or after such period has expired. As it was rightly stated by the District Court, it is in the discretion of the court to grant extension of time. At least, with a view to exercising such discretion, the court must be satisfied that there has been shown by the Applicant a reasonable or sufficient cause why he could not timely lodge the appeal. In the case at hand the applicant did not show to the court either by the affidavit filed in support of the chamber summons or by his oral submission what reasonably caused him not to appeal within the prescribed time. In that premises, it was proper when the court dismissed the Application. In this appeal I find nothing that leads the court to find otherwise.

In that premises the matter appeal is dismissed with costs.

Dated at Dar es Salaam this 27th of March, 2018.


E. J. Mkasimongwa

JUDGE

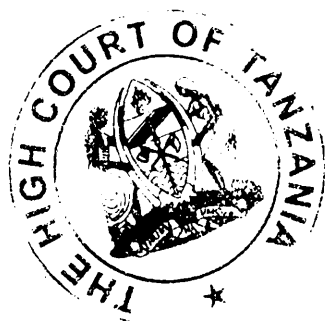
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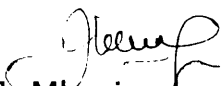
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27/3/2018