

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

MATR. APPLICATION NO. 1 OF 2015

(Arising from Matrimonial Cause No. 3 of 2008 of Bukoba District Court).

KENNEDY NYANDA..... APPLICANT

VERSUS

JOYCE PHILIMON RESPONDENT

RULING

27.02. & 09.03.2018

BONGOLE, J.

This ruling is in respect of application for extension of time by the applicant. The application is made by way of chamber summons supported by an affidavit made under **section 14 (1) of the Law of Limitation Act [Cap.89 R.E.2002]** and **section 80(2) of the Law of Marriage Act [Cap.29 R.E.2002]**.

The applicant is seeking the following orders:-

- a)That, this Honourable High Court be pleased to extend time to file an appeal,***
- b)Any other order or relief this Honourable Court may deem fit.***

In his affidavit in support of this application the applicant averred he delayed to appeal on time because he was sick thus he had to seek medical service from Kagera Government Hospital after the decision of the District court on 10th December,2014. He attached a photocopy of outpatient record card as annexure KN2.

Through the services of Mr. Chamani learned Counsel, the respondent resisted the application in her counter affidavit averring that the applicant had not given sufficient reasons for delay.

At the hearing the applicant represented by Mr. Zeddy Ally learned Advocate while the respondent was represented by Mr. Chamani learned Counsel. By leave of this court the application was scheduled to be argued by way of written submissions.

On behalf of the applicant, Mr. Zeddy Ally who represented the applicant, submitted that the applicant became seriously sick three days after the judgment delivery that is, from 13.12.2014 to 30.06.2015. That as he recovered he made follow up in court and obtained a decree which was supplied to him on 05.07.2015 when the time to appeal had already elapsed. He invited this

court to find that sickness is a sufficient course to justify extension of time envisaged under section 14(1) of the Law of Limitation Act [Cap.89 R.E.2002].

He went on submitting that the intended appeal has overwhelming chance of success and that there is illegality involved in the said appeal. Particularly, he pointed out that the style of recording evidence by the learned trial Magistrate is contrary to the law thus this illegality ought to have been looked into keenly in order to meet the end of justice. In support of his submission he cited the case of **Bukoba Municipal Council Director Vs. Wazamani General Supplies, civil appeal No. 03 of 2005, High Court of Tanzania at Bukoba (unreported)** where Matogolo J. held that recording of evidence in reported speech is contrary to the law. He further referred to the **case of Victoria Really Estate Development LTD v. Tanzania Investment Bank and 3 others, civil application No. 225 of 2014 CAT Dsm Registry (unreported)** where Mmilla J.A, held that illegality is among the factors to be considered in allowing or otherwise, an application for extension of time.

Another point raised by Mr. Zeddy as illegality is that the petition was filed prematurely as indicated on ground five of the intended appeal. He thus prayed this application be allowed.

In reply, Mr. Chamani submitted that the applicant had not given sufficient reason for delay. On being sick, he submitted that the fact that the applicant was attending medical services at Bukoba Government Hospital did not prevent him from making steps to appeal on time.

He went on submitting that even after his recovery from sickness he still had ample time to process his appeal but he failed so to do without apparent reasons. He was of the view that this is failure to account for each day of delay which failure cannot be entertained by this court. He relied on the case of **Sebastian Ndaula V. Grace Rwamafa, Civil application No. 4 of 2014 CAT Bukoba Registry (unreported)** where it was held that the applicant must in law, account for each day of delay in persuading the court to extend of time.

On illegality especially the aspect of premature, he submitted that the applicant failed to explain how premature the petition was. He reasoned that in looking at illegality the court considers whether there is non-direction or misdirection in evidence and not

otherwise. He was of the view that in the case at hand this criterion is not met. In substantiation of his submission he cited the case of **Gibb Eastern Africa LTD Vs. Syscon Builders LTD, CAT, civil application No. 5 of 2005 Dsm Registry (unreported)** where it was held that misdirection, non direction or irregularities in the intended appeal constitute reasonable chance of success. He invited this court to disregard this reason and dismiss this application.

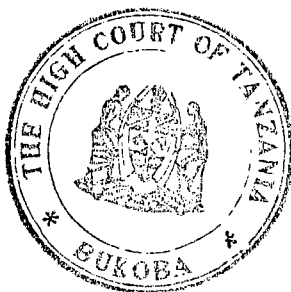
In determining this application, the main issue is whether the applicant disclosed sufficient reason. It is not disputed that the applicant was attending medical services from 13.12.2014 to 30.06.2015 at Bukoba Government Hospital. This is according to the medical chit (Card) annexed to the applicant's affidavit as annexure *KN.2*. The same indicates that he had blood pressure complications. I have considered this fact and I am of the view that this is a sufficient cause because under that health problem the applicant could not have processed his appeal steadily.

Regarding the alleged illegality, the counsel for the applicant submitted that the petition at the trial court was filed prematurely and that there was irregularity in evidence recording. On the other hand, Mr. Chamani opposed this arguing that what is to be considered is misdirection or non-direction in evidence and that

the applicant was not clear on the point of premature. Suffice it to say that illegality includes inter alia any violation of the law. Now if there is any violation of the law in the proceedings in question, that will be revealed in determination of the intended appeal. Recording evidence contrary to what the law requires and filing a petition prematurely are matters of law and if detected constitute illegality in my view. I have looked at the proceedings and noted that the way the evidence was recorded leaves a lot to be desired. This can fully be dealt with when the application is granted to pave way for determination of the appeal.

In consideration of health problem of the applicant after the delivery of the judgment to be impugned and alleged illegality I hold that there is sufficient cause to grant this application. The applicant to file his appeal within seven days from the date of this decision. No order as to costs.

Order accordingly.




S.B. Bongole

Judge

09/03/2018

Date: 09/03/2018

Coram: Hon. S.B. Bongole, J.

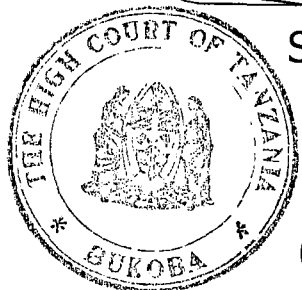
Applicant: Present

Respondent: Present

B/Clerk: A. Kithama

Court:

The application comes for ruling and the same is delivered in the presence of the parties in my presence this 9th March, 2018



S.B. Bongole

Judge

09/03/2018