

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

**MISCELLANEOUS CIVIL APPLICATION NO. 341 OF 2017
(Originating from the decision of the District Court of Ilala at
Samora in Matrimonial Cause No. 30 of 2012)**

MOSHI EMMANUEL GASPAR.....APPLICANT

Versus

HALIMA JONAS NYANDU.....RESPONDENT

RULING

B.R. MUTUNGI, J:

The applicant herein is seeking for the following orders;

- 1. That this Honourable Court be pleased to extend time for the applicant to file matrimonial reference against the judgment and decree from matrimonial cause no. 30 of 2012 out of time which was delivered on the 29th day of September 2015 by W. Luhwago, SRM.*
- 2. Any other relief (s) this Honourable Court may deem just and fit to grant.*

The application has been brought pursuant to a chamber summons made under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2002] supported by an Affidavit sworn by Mashaka Edgar Mfala the Applicant's Counsel.

The applicant in the Affidavit alleges to have been dissatisfied by the decision of the trial court but he has been unable to appeal against the said decision due to the fact that, the appeal had been overruled on legal technicalities. He further alleges to have been denied the right to be heard since the suit was disposed by way of written submissions. He further could not challenge the tendered documents since the matter was disposed by way of submissions.

The respondent in her affirmed Counter Affidavit strongly opposed the application.

The application was heard by way of written submissions and both parties had filed their respective submissions within time.

The applicant through the legal services of Mr. Mashaka Edgar Mfala, Legal Counsel in the written submission in support of the application argued that, after delivery of the trial court's judgment, the applicant did take necessary steps to appeal against the impugned decision. The said appeal was overruled on legal technicalities contrary to Article 107 B (2) (e) of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time). He further argued to have been denied the right to be heard since the matter was disposed by way of written submission. He thus prayed the application be allowed so as to cure the illegalities that exist in the said judgment.

The applicant explained further that, it is trite law that matrimonial proceedings should be heard before parties in

person. This in itself is an illegality. He referred this court to the cases of **The Principal Secretary, Ministry of Defence and National Service Veersus Duram Valambhia [1992] T.L.R 382** and **Anifa Mtumbika Versus Inoesia Miscellaneous Land Application No. 146 of 2016 (High Court of Tanzania at Dar es Salaam) (Unreported)**.

The applicant further challenged the decision of the trial court in that, matrimonial properties are solely distributed to the husband and wife and not the issues in the marriage per the scenario in this matter. In conclusion the applicant prayed that, for the sake of justice the time to appeal be extended.

In response the respondent in her written submission opposed the allegation of existence of illegality in the trial court's decision. She further opposed the allegation that, the applicant was denied the right to be heard since the court correctly ordered the matter be disposed by way of

written submissions in terms of **Order IX Rule 6 (1) (i) of the Civil Procedure Code [Cap. 33 R.E 2002]**

The respondent argued the applicant has failed to demonstrate the reason for the delay hence prayed the application be rejected. She cited the cases of **Bagamoyo 2000 Investment (T) Ltd Versus Hamza Daudi Zakaria & Tunakopesha Ltd; Interchick Company Ltd Versus Mwaitenda Ahobokile Michael Civil Application No. 218 of 2016 (CAT-DSM) (Unreported); M.A Suleiman and Sons Ltd and Two Others Versus The Registered Trustees of the Anglican Church Tanzania, Civil Application No. 93 of 2016 (CAT-Unreported)** to support her position.

The issue here is whether the application has advanced sufficient reasons for the extension.

In the case of **D.N. BAHRANI LOGISTICS LTD AND ANOTHER VERSUS NATIONAL BANK OF COMMERCE LTD AND**

ANOTHER, CIVIL APPLICATION NO. 449/16 OF 2016 (CAT-DSM) (UNREPORTED) at page 5 the Court citing with approval the case of **Mumello Versus Bank of Tanzania [2006] 1 EA 227** held;

'It is trite law that, an application for extension of time is entirely in the discretion of the court to grant or refuse it. And an extension of time may only be granted where it has sufficiently established that, the delay was with sufficient cause.'

Further, in **D.N. BAHRANI LOGISTICS LTD AND ANOTHER's (supra)** the court defined what amounts to a good cause. At page 6 the Court cited with approval the case of **Regional Manager of Tanroads Kagera Versus Ruaha Concrete Company Limited, Civil Application No. 96 of 2007 (Unreported)** where it was stated;

'What constitutes sufficient cause cannot be laid down by any hard and fast rules. This must be

determined by reference to all circumstances of each particular case. This means that, the applicant must place before the Court material which will move the court to exercise its judicial discretion in order to extend time limited by Rules.'

Going through the material placed by the applicant, the court is alive with the fact that it is now settled in our civil jurisdiction that, illegality is a good ground upon which a court can extend time. This principle has been established in various cases in the Court of Appeal among these is the case of **Lyamuya Construction Company Limited Versus Board of Registered Trustees of Young Women's Christians Association of Tanzania, Civil Application No. 02 of 2010 (Unreported)** that;

- a) The applicant must account for all days of the delay.*
- b) The delay should not be inordinate*
- c) N/A*

d) If the court feels there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged. (the underline is mine)

The applicant has brought to light that, the matter being a matrimonial case, the same was to be heard on merits. Contrary to what was expected, the court had proceeded by way of written submissions and delivered its judgment based merely on these submissions.

It is the settled opinion of this court that, there is an issue of illegality on the face of the decision being sought to be challenged. Moved by the authority in the cited case of **Lyamuya, (supra)** time is hereby extended to the applicant to be able to file his intended matrimonial reference. The same is to be filed within 30 days from the date of this ruling. I grant no costs.

It is so ordered.


B.R. MUTUNGI

JUDGE

13/4/2018

Right of Appeal Explained.


B.R. MUTUNGI

JUDGE

13/4/2018

Read this day of 13/4/2018 in presence of Julius Mpoki for
Netala and respondent in person.


B.R. MUTUNGI

JUDGE

13/4/2018