

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

MISCELLANEOUS CIVIL APPLICATION NO. 796 OF 2017

**(Originating from the decision of the Juvenile Court of Dar es
Salaam in Miscellaneous Civil Application No. 42 of 2017)**

JOYCE JOSHUA BARU.....APPLICANT

Versus

KEVIN WILLIAM NKUNGU.....RESPONDENT

RULING

B.R. MUTUNGI, J:

The applicant is seeking for an extension of time to file the intended appeal against the Ruling of the Juvenile Court of Dar es Salaam in Miscellaneous Civil Application No. 42 of 2017 which was delivered on 15/11/2017. The court has been moved under the provisions of section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2002] and section 95 of the Civil Procedure Code [Cap. 33 R.E 2002]. The same is supported by an Affidavit sworn by the applicant.

In her Affidavit, the applicant avers to have been dissatisfied with the said decision on the basis that, the respondent was given the custody of the children and the trial court did not order him to provide maintenance. The applicant further alleged to have requested to be supplied with the copies of the ruling, drawn order and proceedings on 16/11/2017. She alleges further to have made a follow up on 21/11/2017 only to be directed by the court clerk to come back on 28/11/2017. Unfortunately she did not succeed to get the said documents since they were not ready for collection.

The applicant goes further and alleges to have written a reminder letter on 4/12/2017 to be supplied with the appeal documents. The same were supplied to her on 11/12/2017. Thereafter, the applicant consulted the

Women's Legal Aid Center (WLAC) for assistance in preparation of the intended appeal but she was advised to file the present application since the appeal time had already expired. The applicant confirms there was no negligence on her side in her endeavor to pursue the intended appeal, since she had played no part in the delay. To cap it all, she submitted the intended appeal has overwhelming chances of success.

Principally, the respondent through his counter affidavit opposed the application.

When the application was called for hearing, the matter was ordered to be argued by way of written submissions. This was because of very obvious reasons, since the applicant has been enjoying the legal services from WLAC. The record reveals both parties filed their respective submissions within the prescribed filing schedule.

The applicant who is assisted by WLAC in her written submission pointed out that, the time limit to appeal against the ruling of the trial court was within 14 days from the date of the decision as per Rules 123 (1) and (2) of the Law of the Child (Juvenile Court Procedure) Rules, 2016 GN. No. 182. She has thus urged the court to invoke its discretionary powers to grant the application vested in section 14 (1) of the Law of Limitation Act (supra).

The applicant's line of reasoning is that, the circumstances of the matter at hand indicate she had made prompt efforts as pointed earlier. She ended up wasting a lot of time requesting for the relevant documents from the trial court. She thus referred this court to the cases of **Dar es Salaam City Council Versus Jayantilal Rajan- CAT Civil Application No. 27 of 1987** and **Tanga Cement Company Limited Versus Jumanne Masingwa and Amos Mwalwanda- Civil Application No. 6 of 2001** to support her

position. She thus called upon the court to find she has advanced sufficient reasons herein to warrant the extension sought.

The applicant has further prayed the court to be guided by Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time). She was of the view the court should not allow technicalities to override substantive justice. She invited the court to look at the case of **South British Insurance Ltd Versus Mohamed Taibje (1973) EA 210** and proceed to exercise its discretionary powers.

In reply thereto, the respondent who enjoys the legal services of Meshack Lyabonga (Advocate) strongly contested all that had been submitted by the applicant. He was of the view that, the applicant had not advanced sufficient reasons to support the application as required by

law. The respondent further argued the intended appeal does not stand any chances of success, since there is no evidence to suggest the best interest of the children is vested with the applicant as opposed to the respondent. The evidence which is supported by the social welfare officer's Report stipulates that, in the best interest of the children (now over seven years) be left in the care of the respondent (their father). He referred this court to the cases of **Ramesh Rajput Versus Mrs. Sunanda Rajput [1998] T.L.R 96; Andrwe Marline Versus Grace Christopher, Civil Appeal No. 68 (HC-DSM Registry) (Unreported) and Rajabu Kadimwa Ng'eni and another Versus Iddi Adam [1991] T.L.R 38** to back up his position.

The respondent in view of his submissions prayed the application be dismissed with costs.

In her rejoinder the applicant reiterated what she had submitted in her submission in chief that, there are sufficient causes in support of the application. She further insisted there are overwhelming chances of success in the intended appeal.

The issue which needs to be determined herein is whether the applicant has advanced sufficient reasons to be granted the sought extension.

In interpreting of what constitutes a good cause, it is entirely left to the discretion of the court, however the facts as to what constitutes a good cause are never closed. These will depend on the circumstances of each case. This legal position was emphasized in the case of **JUMA SHOMARI AND 8 OTHERS VERSUS QUIMSTEEL MILLS TANZANIA LTD, CIVIL APPLICATION NO. 67 OF 2015 (CAT-DSM) (UNREPORTED)**

Further, it is now trite law that, what amounts to a sufficient or good cause includes whether or not the application has been brought promptly; absence of any valid explanation for the delay and lack of diligent on the part of the applicant. This position was also cemented in the cases of **EZRON MAGEA MARYOGO VERSUS MOHAMED SAID AND ANOTHER, CIVIL APPLICATION NO. 227 OF 2015 (CAT-DSM) (UNREPORTED)** and **ZAHARA KITINDI AND ANOTHER VERSUS JUMA SWALEHE AND 9 OTHERS, CIVIL APPLICATION NO. 4/05 OF 2016 (CAT-AR) (UNREPORTED)**

Turning to the application at hand, the applicant is merely claiming to have applied to be supplied with the copies of the trial court's ruling, decree and proceedings on 16/11/2017 (one day after the said ruling was delivered). She further alleged to have written a reminder letter to the trial court on 4/12/2017 but she was subsequently supplied with these copies on 11/12/2017. The instant application was

filed herein on 18/12/2017 after consulting WLAC on 12/12/2017.

Upon my objective perusal of the entire court record as well as the submissions from both camps, I find the applicant's advanced reasons lack merits. The reason being that, it is true as submitted by the applicant the trial court delivered its ruling on 15/11/2017. However, there is no evidence to prove the applicant wrote the alleged letters dated 16/11/2017 and 4/12/2017 to the trial court as alleged. The alleged letters (annexed to the application) bear no court stamp to confirm what has been alleged by the applicant. Therefore, it is uncertain as to whether the applicant wrote the alleged letters on the specified dates and if at all were received by the trial court.

More so, the trial court's ruling and its proceedings appear to have been ready for collection on 6/12/2017,

since they were duly certified by the trial Magistrate on the particular date. For that reason, I find the applicant was inactive in processing her appeal.

The applicant has moved the court to take into account **Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania (supra)** in exercising its discretionary powers in granting the application. From the outset, I totally differ with the applicant in light of the holding in the case of **THOMAS DAVID KIRUMBUYO AND ANOTHER VERSUS TANZANIA TELECOMMUNICATION CO. LTD, CIVIL APPLICATION NO. 1 OF 2005 (CAT-DSM) (UNREPORTED)** at page 6 where the Court of Appeal held;

*'...In order to ensure that the machinery of administering justice is not hampered, the court is **bound stringently**. There is no exception provided under the rules for a relaxed application when laymen are involved as is the case here. All the more so, when it involves noncompliance with the*

rules on aspect which go to the root, the consequences are fatal. ...I cannot therefore entertain the applicant's lenience in applying the rules upon the fact they are laymen.'

As if not enough, the Court of Appeal of Tanzania in one occasion had construed the wording of the said Article. This is the case of **ABUBAKAR ALI HIMID VERSUS EDWARD NYELUSYE, CIVIL APPEAL NO. 70 OF 2010 (CAT-DSM) (UNREPORTED)** at page 10 where the Court cited with approval the case of **Zuberi Musa Versus Shinyanga Town Council, Civil Application No. 100 of 2004 (Unreported)** that;

'...Article 107A (2) (e) is so couched that in itself it is both conclusive and exclusive of any opposite interpretation. A purposive interpretation makes it plain that it should be taken as a guideline for court action and not as an iron clad rule which bars the courts from taking cognizance of salutary rules of procedure which when properly employed held to enhance the quality of justice. It recognizes the importance of such rules in the

orderly and predictable administration of justice....'

In the instant application, since the applicant has failed to advance sufficient reasons in compliance with the law, consequently the applicant cannot seek refuge under the umbrella of the said Article.

In the upshot as I have demonstrated above, in absence of any valid explanation and lack of diligence on the applicant's part, the court cannot invoke its discretionary powers. It has been said over and over again that this discretion should be exercised judiciously. The applicant has alleged to have been involved in a conversation with one of the trial court's court clerk at the time she was making a follow up of the necessary documents, but there is no supporting Affidavit from the said clerk to confirm the said version of story.

From the foregoing reasons, there is no room for the court to determine whether the intended appeal has overwhelming chances of success or otherwise since the cited enabling provisions are self-explanatory that the court will have to exercise the powers enshrined under these provisions only and only when the applicant has successfully demonstrated reasonable or sufficient cause of the delay.

All said, considering the prevailing circumstances of the matter at hand it is crystal clear that, the applicant has failed to advance sufficient reasons for the delay from the time the said ruling was delivered to the time when the application at hand was filed herein. In the event the application has no merits, it is dismissed with no order to costs.

It is so ordered.


B.R. MUTUNGI

JUDGE

13/4/2018

Right of Appeal Explained.


B.R. MUTUNGI

JUDGE

13/4/2018

Ruling read this day of 13/4/2018 in the presence of Anna Andrew Ley (Applicant's mother) and Jaillos Mpoki for Meshack Lyabonga for the respondent.


B.R. MUTUNGI

JUDGE

13/4/2018