

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

*(Arising from Matrimonial Cause No. 25 of 2016 at Resident Magistrates  
Court Arusha)*

**MISC. CIVIL APPLICATION NO. 23 OF 2018**

**JOSHUA JOSEPH ..... APPLICANT**

**VERSUS**

**FLORA SAMWEL ..... RESPONDENT**

**MAIGE, J**

**RULING**

By way of chamber, the applicant is inviting the Court to extend time within which to appeal against the decision of the Resident Magistrate Court of Arusha (“the trial court”) in matrimonial cause number 25 of 2016. The application is premised on section 14(1) of the Law of Limitation Act. The applicant has deposed an affidavit to support the application. There was also deposed a supplementary affidavit by Christina Kimale, learned advocate for the applicant. Both the affidavits were opposed by the counter affidavit of Frida Magesa, learned advocate for the respondent.

The decision sought to be appealed against was delivered on 3.08.2017. It emanated from matrimonial proceedings. The respondent was successful in a petition for divorce and division of matrimonial properties, among others. The decision of the trial court did not please the applicant.

In accordance with the factual deposition in the affidavit, despite her request for copies of judgment and decree through her letter dated 17<sup>th</sup> August 2017 and reminder letter wrote by her advocate on 9<sup>th</sup> November 2017, she was not supplied with copies the judgment and decree to enable her to prepare her appeal. This fact is confirmed by the counsel for the applicant in her supplementary affidavit. It was not, according to the deposition in the supplementary affidavit, until on 8<sup>th</sup> November 2016 when at last the documents were availed to her. As by that time the appeal was already time barred, the applicant filed the instant application.

In her submissions in chief, advocate Kimale adopted the factual depositions in both the affidavits and submitted that the applicant was prevented from timely filing the appeal because of the delay to be supplied with a copy of judgment. She submitted further that since she was not in the conduct of the matter during trial, it was practically difficulty for her to prepare and file an appeal without being supplied with a copy of the judgment.

On top of the factual justification of the application in the affidavit, Miss. Kimale has also relied on illegality in the decision of the trial court as a

ground for the application. She pointed out some statements in the judgment which renders it illegal for the reason of uncertainty. I was referred the authority of the Court of Appeal in **NBC VS. MAHMOOD SALUM CHIBANGO MHINA AND OTHERS, CRIMINAL APPEAL NO. 472/17 OF 2016** where uncertainty in the decision sought to be appealed against was considered to be an illegality which could justify extension of time.

In the counter affidavit, it is claimed that, copies of judgments were available for collection since 22<sup>nd</sup> September 2017. The deponent of counter affidavit does not appear to deny the fact that the applicant timely requested for copies of the judgment and decree. I have no reason why I should not believe the claim by the counsel for the respondent that she was supplied with a copy of judgment on 22<sup>nd</sup> September 2017. Equally so for the deposition in the supplementary affidavit that the applicant was supplied with the same on 8<sup>th</sup> November 2016.


It was submitted for the respondent that, a copy of judgment would not justify for the delay because under the Law of Marriage Act, a copy of judgment is not an essential ingredients of an appeal. There was no dispute on that position of law. The argument by the counsel for the applicant is that; as she was not in the conduct of the matter during trial, copy of the judgment was necessary for preparation of the appeal. I entirely agree with her. In a situation where the counsel was not in the conduct of the matter during trial, delay to procure a copy of judgment

for which to prepare an appeal may be a sufficient ground for extension of time. On appeal which can be preferred without a copy of judgment being attached.

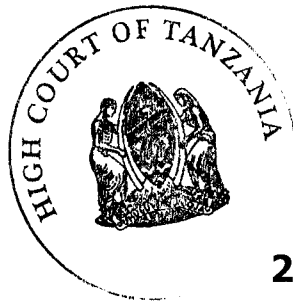
It was further the submissions by the counsel for the applicant that, since the decision of the trial court is sought to be challenged on account of illegality, that alone can suffice as a ground for extension of time. There was no comment from the counsel for the respondent on this issue. I take it that she does not deny. On my part, I have taken time to read the judgment of the trial court and I agree with the counsel for the applicant that there are some elements which may entail illegality. In Principle Secretary, Ministry of Defense and National Service vs. Devran Valambia, 1992, TLR 185 and Motor Vessel Sepideh & Pemba Island Tours & Safari vs. Yusuf Moh'd Yusuf & Ahmed Abdullah, Civil Application No. 91 of 2013 (CAT-Zanzibar- Unreported), it was held that where the point involved in the intended appeal is illegality, that can be a sufficient cause for extension of time.

For those reasons therefore, I find that sufficient cause for extension of time within which to appeal exists. Extension of time to appeal against the decision of the trial court is hereby granted. The same should be filed within 30 days from the date of the receipt of a copy of this ruling.

It is so ordered.

  
**I. MAIGE**  
**JUDGE**  
**24/10/2018**

Ruling delivered this 24/10/2018 in the presence of Miss. Kimale, learned advocate for the applicant and Miss Frida Magessa, learned advocate for respondent.



A handwritten signature in black ink, appearing to read "I. Maige", written over a horizontal line.

**I. MAIGE**

**JUDGE**

**24/10/2018**

A small, stylized handwritten mark or signature, possibly a flourish or a second signature, located to the right of the main signature.