

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO.733 OF 2017**

ROSENA P MMBANDO APPLICANT

VERSUS

JUDICAMREMI RESPONDENT

18/04&25/ 05/2018

RULING

MWANDAMBO, J:-

This application should not have found its way to the doors of this Court but for the Applicant's lack of understanding and appreciation of procedural steps in instituting her appeal as well as the applications for extension of time within which to do so upon expiry of the time for doing so. By the dint of what befell the Applicant lodging her appeal within the prescribed period, I am now called upon to consider her application for extension of time within which to do so in the light of section 14 (1) of the law of Limitation Act, Cap 89 [R.E 2002] under which the application has been preferred.

The parties to this application were parties in Matrimonial Cause No. 53 of 2014 which terminated on 29th January, 2016 by the grant of divorce followed by orders for division of matrimonial assets. In terms of section 80 of the Law of Marriage Act, Cap 29 [R.E 2002] an aggrieved party has a right to appeal to the High Court by filing a memorandum of appeal in the Magistrate's Court within 45 days from the date of the decision sought to be appealed against. Aggrieved by the order for the division of the matrimonial assets, the Applicant sought to appeal to this Court with the legal aid from The Tanzania Women Lawyer's Association (TAWLA) who provided legal aid to the Applicant drew a memorandum of appeal of her. Instead of lodging the memorandum of appeal in the trial court as mandated by

section 80 (2) of the Law of Marriage Act, Applicant lodged it in this Court well within the prescribed period. That appeal instituted by way of a memorandum of appeal was found to have been wrongly filed in this Court and so it was accordingly struck out. Since the time for lodging a fresh appeal had already expired, the Applicant sought to apply for enlargement of time. Yet again, TAWLA assisted the Applicant by drawing the chamber summons and the supporting affidavit and the Applicant filed her application before the District Court. Sadly, that was another legal flaw as section 14 (2) of Cap 89 vests jurisdiction on this Court to determine such applications and so the District Court before which the applicant filed her application lacked jurisdiction resulting into the dismissal of that application on 21st October, 2016. Following that order, the Applicant filed Misc. Civil Application No. 20 of 2017 before this Court on 24th January, 2017. My sister (Muruke, J) marked the said application withdrawn with leave to re-file a fresh one and hence the instant application filed a day after Muruke, J's order.

The Applicant's affidavit annexed to the chamber summons attributes the events set out above as sufficient for this Court to extend the time within which to lodge an appeal in the light of section 14 (1) of Cap 89. Mr. Greyson Laizer learned Advocate who represents the Applicant pegged his submissions on the fact that the Applicant did not sleep over her right to appeal and that being a lay person, she was incapable of appreciating the legal procedures for lodging her appeal and the appropriate forum for doing so and hence the striking out of her appeal as well as the dismissal of her application for extension of time for being filed before wrong forums.

Mr. Thomas Massawe learned Advocate for the Respondent urged me to find and hold that the Applicant has not exhibited sufficient grounds to warrant an order for extension of time under section 14 (1) of Cap 89. The learned Advocate impressed upon me to find that it is clear from the affidavit as well submissions made before this Court that the Applicant filed her appeal and the application for extension of time in wrong courts which cannot constitute sufficient reason for extension of time particularly when the Applicant was ably represented by TAWLA

and NL Tenga Partners Advocates. Mr. Massawe distinguished all authorities cited by the Advocate for the Applicant on the ground that what the Court is concerned in an application for extension of time is the reason(s) for the delay and not otherwise. However, Mr. Massawe appeared to suggest that a person who enjoys a legal assistance should be treated differently from one who has no legal representation at all and since the Applicant was ably represented, she should face the full effect of consequences flowing from failure to exhibit sufficient reasons to lodge an appeal as it were.

Having considered the submissions for and against the application with authorities cited to me in the light of the affidavit in support of the application, the only issue for my consideration is whether the reasons explained in the Applicant's affidavit constitute sufficient cause in the context of this application. As seen earlier the decision sought to be challenged on the intended appeal emanates from matrimonial proceedings. It is common ground that the Applicant lodged her appeal to this Court instead of the District Court within time after the judgment of the District Court. The documents attached to the affidavit show that TAWLA assisted the Applicant in drawing documents but the actual filing was done by herself at all stages. The learned Advocate for the Respondent suggests that the Applicant was legally represented and thus the error of her legal advisors should visit her by dismissing the application for lack of sufficient cause.

There is no dispute that the grant of an application for extension of time is discretionary based on sufficient cause being shown to explain away the delay in the context of section 14 (1) of Cap 89. It is, I think settled also that each case must be decided on its peculiar facts and circumstances. The main cause for the delay in this application is the institution of the appeal in a wrong court followed by an application for extension of time yet in a court without jurisdiction. Section 21 (2) of Cap 89 stipulates as follows:

“(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due

diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

It will be clear from the foregoing provision that where it is shown as in this application the Applicant prosecuted an appeal and applications for extension of time with diligence and in good faith in courts which were incompetent to entertain them for lack of jurisdiction, the time spent in those proceedings must be excluded. Gladly, the section cited does not discriminate between a party who is legally represented and who is not but even if that was so, the Applicant cannot be said to have been legally represented in the strict sense so as to attribute negligence (if any) of the Applicant's legal advisors to her and refuse to grant the application as Mr. Massawe seemed to impress upon me. Having regard to the peculiarities of the application, the diligence shown by the Applicant and having had a glance at the intended memorandum of appeal, I am satisfied that this is a fit case to exercise discretion in favour of the Applicant by extending time within which to appeal.

In the event, the application is hereby granted and the Applicant is ordered to lodge her memorandum in the District Court as required by section 80(2) of the Law of Marriage Act within thirty days from the date hereof. Each party shall bear his/her own costs. It is accordingly ordered.

Dated at Dar es Salaam this 25th day of May 2018



L.J.S. Mwandambo

JUDGE

25/05/2018