

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

MISCELLANEOUS CIVIL APPLICATION NO. 92 OF 2019

(Originating from Matrimonial Cause No. 2 of 2017 at Kilosa District
Court at Kilosa)

MARIAM GWERDER ----- APPLICANT

VERSUS

JOSEPH GWERDER @ GWERDER ----- RESPONDENT

RULING

MUTUNGI, J.

MARIAM GWERDER herein is seeking for the following reliefs;

1. *That this Honourable court be pleased to extend time within which to file an appeal out of time.*
2. *Any other orders as this Honourable court may deem fit and just to grant.*

Basically, the applicant in her chamber summons has moved the court under section 14 (1) of the Law of Limitation Act [Cap. 89 R.E 2002] and Order XLIII Rule 2 of the Civil Procedure

Code [Cap. 33 R.E 2002]. The same is supported by an Affidavit dully sworn by the applicant.

On the other side, the respondent through her affirmed corresponding counter affidavit strongly opposed the application.

Before venturing on the merits of the application, let the background of the matter be summarized. According to the applicant's Affidavit, before the Kilosa District Court in Matrimonial Cause No. 2 of 2017 the applicant was the respondent and the respondent herein was the petitioner seeking divorce. Upon hearing both parties, the trial court delivered its judgment on 06/07/2017, the same was in the respondent's favour.

The applicant further alleged that, she was aggrieved by the said decision and lodged her intended appeal herein (Civil Appeal No. 210 of 2017). However, the same was dismissed for being filed out of time. The applicant alleged that the cause of the delay was due to her health problems leading to her hospitalization and attending clinics thereafter. She

insisted the delay to lodge the intended appeal was not caused by her negligence. She has been a cancer patient.

In response to the above allegations, the respondent in his Counter Affidavit opposed the reason advanced of ill health by the applicant. The reason being that, the applicant was all along making appearance in the trial court together with her counsel. Basically, the respondent opposed the application.

On 05/09/2019 when the application was called for hearing, the applicant appeared in person while Prof. C. Binamungu, learned Counsel appeared for the respondent. The applicant in her submission in support of the application at hand maintained the reason for the delay. She further insisted that she is still suffering from ill health (sick legs) and has attached the medical reports from Ocean road.

In reply, Prof. C. Binamungu cemented, the applicant has lodged the instant application after elapse of 1 year and 7 months from the date of the decision of the trial court. Prof. Binamungu went further by submitting that, the records of the trial court were ready for collection two weeks after the

delivery of its decision and the time limit to file the intended appeal is 45 days as per section 80 of the Law of Marriage Act, [Cap. 89 R.E 2002]. The applicant has not accounted for the said delay.

Further, Prof. Binamungu argued the applicant has not advanced sufficient reasons for the sought extension which was due to the applicant's lack of diligence. He insisted the applicant was fully attending at the trial court and has attached the copy of the proceedings to prove the same. Prof. Binamungu cited the case of **TANZANIA HARBOURS AUTHORITY VERSUS MOHAMED MOHAMED E.A [2010]** to support his arguments.

In her rejoinder, the applicant reiterated the arguments put forward in her submission in chief.

The issue is whether the application has merits or otherwise. It is trite law that, an application for the extension of time must be backed up by sufficient reasons. The prerequisite conditions/factors to be considered include among other factors, the length of the delay and the reasons for the delay. See; **THE BANK OF TANZANIA VERSUS EMERENCIANA**

**CHRYSTOM, CIVIL APPLICATION NO. 44 OF 2009 (CAT – DSM)
(UNREPORTED).**

In the instant application, the court record is clear that the applicant at first lodged her intended appeal in Civil Appeal No. 210 of 2017. On 22/03/2018 the same was dismissed for being filed out of time. The court record further reveals, the instant application was lodged on 25/02/2019. In order to support her application, the applicant alleged she was sick as a result, she had failed to lodge her appeal in time as per the medical reports attached herein.

On the other hand, Prof. Binamungu strongly opposed the reasons advanced by the applicant. Basically, the respondent's counsel argued the reason advanced by the applicant are not sufficient since the applicant had not accounted for the delay of these days.

Upon my thorough scrutiny of the entire court record and submissions from the conflicting camps, I agree with Prof. Binamungu that the applicant has not advanced sufficient reasons in support of her application. I say so because, the attached medical report suggests the applicant was not

admitted in hospital. The records indicate the applicant attended hospital on 10/06/2018, 17/09/2018, 22/09/2018, 24/12/2018, 21/03/2019, 09/02/2019 and 02/02/2019.

In my settled view, the above dates stated by the applicant do not justify the reason for the delay to lodge the intended appeal herein. As per the applicant's Affidavit, the trial court delivered its judgment of 06/07/2017 but at that time there is no evidence whether the applicant was either admitted or attending clinics in hospital. Basically, the applicant was attending hospital from 10/06/2018. It goes without saying the applicant has not accounted for the delayed days from 06/07/2017 to 10/06/2018 when she started attending hospital.

Further, the applicant in her Affidavit and oral submissions did not account the days of delay from 22/03/2018 when this court dismissed her previous appeal (Civil Appeal No. 210 of 2017) to 25/02/2019 when the instant application was filed. Considering the fact that, the evidence from the applicant is silent if at all from 22/03/2018 to 09/06/2018 was attending hospital, then this reasons leaves a lot to be desired. Be as it

may, by virtue of annexure "M 2" dated 25th July, 2018 the doctor states;

"Her condition is much better, improving quite significantly so far".

In view thereof, it follows the applicant has not accounted for the delay of the days as pointed above. Further, there is obviously an element of the applicant's inactiveness to prosecute her intended appeal which has been activated by her sloppiness. The law on this aspect is well settled as amplified. In the case of **TANESCO VERSUS MUFUNGO LEONARD MAJURA AND 15 OTHERS, CIVIL APPLICATION NO. 94 OF 2016 (CAT – DSM) (UNREPORTED)** at page 10 where the Court of Appeal of Tanzania cited with approval the case of **LYAMUYA CONSTRUCTION COMPANY LTD VERSUS BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010** which states;

- a) *The applicant must account for the delay for the period of the delay.*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence, and not apathy, negligence or sloppiness in the*

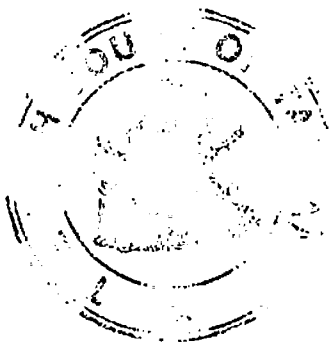
prosecution of the action that he intends to take.

d) *If the court feels that, 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.*

[Emphasis mine]

In the circumstances of the instant matter, not only has the applicant not accounted for the delay of the days mentioned earlier but also the applicant was inactive in prosecuting her intended appeal which has been activated by sloppiness. In the event, I find the applicant has failed to advance sufficient reasons for the delay in support of her application.

Consequently, the application is hereby dismissed with no order for costs because the matter at hand originated from matrimonial proceedings.

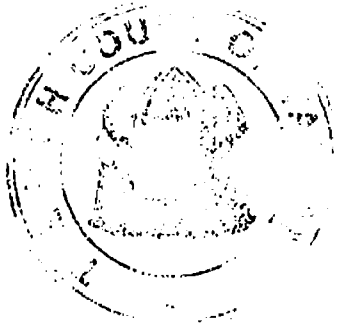



B. R. Mutungi

JUDGE

16/10/2019

Read this day of 16/10/2019 in presence of the applicant and Mr. Steven Frank Mhando holding Prof. Binamungu's brief for the respondent.

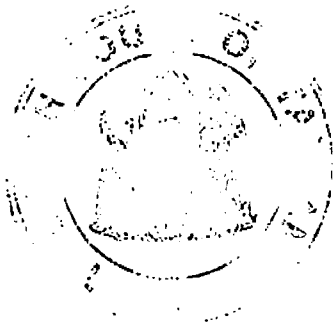


B. R. Mutungi

JUDGE

16/10/2019

Right of appeal explained.



B. R. Mutungi

JUDGE

16/10/2019