

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

AT DAR ES SALAAM

CIVIL REVISION NO. 21 OF 2018

(Arising from the Ruling of the Resident Magistrate's Court of Kinondoni at Kinondoni, Hon. J. Mushi RM in Misc. Civil Application No. 136 of 2017 originating from Matrimonial Cause No. 40 of 2015 dated 13th April, 2018)

JOHN NYAKIMAHE.....APPLCIANT

VERSUS

PRISCA LAURENT.....RESPONDENT

RULING

Date of last Order: 29/04/2020

Date of Ruling: 01/07/2020

MLYAMBINA, J.

The application before the court was made under the provisions of *Section 79 (i), (b) of the Civil Procedure Code Cap 33 and Section 44 (1) (b) of the Magistrates Courts Act*. The basic prayer by the applicants is for this court to call for record of the proceedings in Matrimonial Cause No. 40 of 2015 quash the ruling which refused application for extension of time to set aside an ex-parte judgement and allow the same.

The reason advanced by the applicant is that the trial Magistrate erred in law for not considering the applicant's ground for extension of time that the court did not notify the applicants on the date of

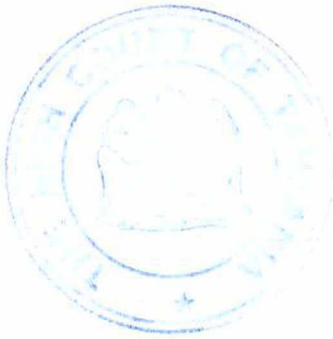
judgement as it is provided under *Order XX Rule 1 of the Civil Procedure Code Cap 33 (R.E. 2002)*

The court, after the case has been heard shall pronounce judgement in open court, either at once or on some future day of which due notice shall be given to the parties or their advocate.

The respondent did not contest the application having gone through the records; I became satisfied that the exparte decision was reached in contravention of Order XX Rule (1) (*supra*). It was also against the Court of Appeal decision in the case of **Cosmas Construction Ltd v. Arrow Garments (1992) TLR 127** in which the court observed that the court ought to have notified the party in the case about the date of exparte judgement so that he could take necessary steps if he so wished.

In the light of the above, I'm satisfied that the illegality raised constituted a good ground for extension of time. (See **Ezrom Mages Maryogo v. Kasm Mohamed said and Another, Civil Application No. 227 of 2014 Court of Appeal of Tanzania at Dar es Salaam** (unreported).

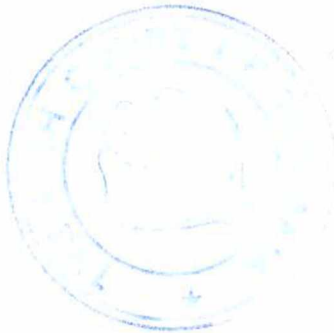
In the circumstances, the ruling of the trial court dated 13/4/2018 and the ex-parte judgement dated 30/3/2015 are hereby quashed and set aside. The matter to proceed inter-parties from where it ended. Costs be shared.



Y. J. MLYAMBINA
JUDGE
01/07/2020

A handwritten signature in blue ink, written in a cursive style, positioned to the right of the judge's name and date.

Ruling delivered and dated 1th July, 2020 in the presence of Counsel Theodori Primus and Jackline Rweyongeza, Advocate for the Applicant and in the absence of Respondent.



Y. J. MLYAMBINA
JUDGE
01/07/2020

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