

**IN THE HIGH COURT OF TANZANIA**

**AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION NO. 54 OF 2020**

(Originating from HC. PC. Matrimonial Appeal No. 45 of 2017)

**AGNESS ERASTO ..... APPLICANT**

**VERSUS**

**ALBERT HUSSEIN ..... RESPONDENT**

**EXPARTE RULING**

**01 & 10/07/2020**

**RUMANYIKA, J.:**

The application for extension of time within which, with respect to judgment and decree of 04/02/2019 Agness Erasto (the applicant) to appeal to the Court of Appeal is brought under Sections 5 (1) (c) and 11 of the Appellate Jurisdiction Act Cap 114 R.E. 2019 essentially and Rule 45 (a) of the Court of Appeal Rules, 2009.

When the Application was called on for hearing on 01/07/2020 only the applicant was in court. I dispensed with appearance of Albert Hussein (the applicant) as the former appeared last on 22/06/2020 and by consent the application was fixed for hearing for 01/07/2020 hence the exparte Ruling. Through mobile number 0756051671 and pursuant to global outbreak of the Coronavirus pandemic I heard the applicant by way of audio teleconferencing.

The applicant submitted that the reason for delay was that initially she had an application which was dismissed on 12/03/2010 then judge of this court directed her that she should have applied to the Court of Appeal of Tanzania as of right hence the technical delay.

The issue is whether the applicant has assigned sufficient grounds for the delay in terms of going for a wrong avenue. The applicant may have lodged Misc. Civil Application No. 29 of 2019 well within time yes, but the matter occupied her until as late as 12/03/2020 when this court dismissed it in terms of court's jurisdiction having been wrongly filed. The applicant received copy of the order on 10/04/2020 yes, but she filed the present application on 19/05/2020 which was, by all intents and purposes reasonably immediate. Leave alone the technical nature of the delay suffices the point to dispose of the application.

The issue whether or not the judge did not in his judgment issue a decree of divorce or order of division of matrimonial property therefore a point of illegality the point was not sufficiently established much as no copy of the impugned judgment, decree or something was appended to the instant application.


The application is granted. Each party shall bear their costs. It is ordered accordingly. Right of appeal explained.

  
**S. M. RUMANYIKA**

**JUDGE**

**08/07/2020**

Ruling delivered under my hand and seal of the court this  
10/07/2020 in the absence of the parties with notice.



**S. M. RUMANYIKA**  
**JUDGE**  
**10/07/2020**