

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

**MISC. CIVIL APPLICATION NO. 596 OF 2018**

*(Arising from Matrimonial Cause No. 4 of 2010 in the High Court of United Republic of Tanzania at Dar es Salaam before Hon. Kibela, J.)*

**FRANCIS MADEMBWE ----- APPLICANT**

VERSUS

**THABITA MADEMBWE ----- RESPONDENT**

**RULING**

**MLACHA, J.**

The applicant, FRANCIS MADEMBWE and the respondent THABITA MADEMBWE were husband and wife long before their marriage was dissolved by a judgment of this court (Kibela, J. RTD, Ex-parte) delivered on 02/12/2015. The court proceeded to divide the matrimonial assets. Some 2 years and 10 months elapsed in between without taking any action. Then the applicant appeared before this court seeking extension of time within which he can file an application to set aside the Ex-parte Judgment. The

application is made under section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 and is supported by the affidavit of the applicant. The respondent is opposing the application and has lodged a Counter Affidavit.

Mr. Abrahamu Shamumoyo appeared for the applicant while the respondent had the services of Mr. Charles Mugila and Ngusa Erasto, Advocates at different times. Hearing was done by oral submissions.

The principles involved in determination of an application of this nature were stated by this court and the highest court of the land in many cases. In **MOHAMED HAMISI MAWA (The Administrator of the Estate of the late Hamisi Hassan Mawa) VS SELEMANI OMARI KIKWALA AND ANOTHER, MISC. LAND CAUSE APPLICATION NO. 51 OF 2013 (High Court Dodoma unreported)** had this to say;

*... Courts have discretion in deciding whether or not to grant extension of time. However, such discretion must be exercised judiciously, meaning that sufficient reasons must be given before extension of time is granted. The most persuasive reason that the applicant can show is that such*

*delay has not been caused or contributed to by dilatory conduct on his part (see; **SHANTI VS HINDICHE & OTHERS [1973] E.A 207)**)".*

Counsel made long submissions on six areas but I don't intend to respond to each and every point for I think that this application can be disposed of on two points only; one, lack of an account for each day of delay and two, lack of diligence and or the existence of negligence on the part of the applicant.

It was submitted strongly that the applicant did not know what had happened in court. That, he had left everything to his counsel (Shayo) and did not know the outcome of the case up to the time of execution. I think, with respect to the counsel that cannot be true. The period of 2 years and 10 months which exist in between is just too long. It can not be done away by simple reasons like I had lost contact with my client and I never knew what had happened in court. Further, I don't think that what has been said amount to an account for each day of delay as is required. Neither can it be said to be a sufficient reason. It is a mere defence, an indication of negligence on the part of the applicant.

It follows that, no good explanation has been given to show why the applicant could not take an action to set aside the Ex-parte Judgment from 02/12/2015 when the judgment was delivered, up to 05/10/2018 when the present application was lodged. I think that this application ought to be rejected so that the respondent can realize the fruits of the judgment of this court.


Application dismissed with costs.



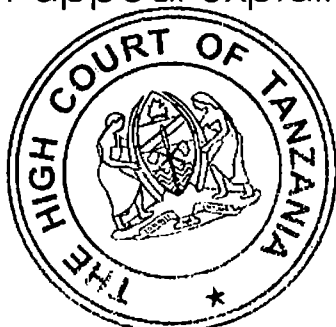
  
L. M. Mlacha  
**JUDGE**  
**13/03/2020**

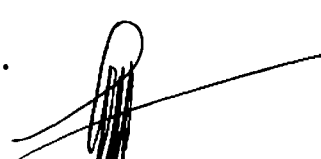
Ruling delivered this day of 13/03/2020 in the presence of Abrahamu Shamumoyo, Advocate for the applicant and Ngusa Erasto, Advocate for the respondent.



  
L. M. Mlacha  
**JUDGE**  
**13/03/2020**

Right of appeal explained.



  
L. M. Mlacha  
**JUDGE**  
**13/03/2020**