

IN THE HIGH COURT OF TANZANIA
DAR -ES -SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 381 OF 2019

AHMED HUSSEIN FIROZ BANDALI..... APPLICANT

VERSUS

SAJIDA MUSTAFA JAFFER..... RESPONDENT

RULING

13th February & 3rd March 2020

ACK. Rwizile, J

This is an application for extension of time within which to file a revision from a ruling of the District of Ilala in execution of Matrimonial Cause No. 32 of 2017. The background of the matter is that sometimes in 2018, the District court of Ilala District delivered a judgment. The applicant had petitioned for divorce and custody of the two children of marriage with the respondent. The decision was made on 25th January 2018. Inter alia, the court gave custody of one of the issues of marriage to the respondent and ordered the applicant to pay 200,000.00TZS for monthly maintenance.

Following days of non-compliance to provide maintenance as decreed, the applicant applied for execution. This was in May 2018. The application was heard and a decision made on 2nd April 2019. He was ordered to pay the sum of 2,200,000.00TZS being arrears for maintenance for the past 14 months. This means, it was since the date of judgment. Seemingly, this ruling aggrieved him. Because he was late to file for revision, he filed this application asking for the following orders;

- i. That this court be pleased to extend time within which the applicant may file application to revise the proceedings and ruling of the Ilala District Court at samora (Hon. M.B Mpaze-RM) dated 2nd April 2019 in Matrimonial Cause No. 32 of 2017.
- ii. That the costs of this application be borne by the respondent
- iii. Any other relief, this court shall deem fit and appropriate to grant.

To present this application was Mr. Joseph Samuel learned Advocate, while the respondent was represented by Kurubone Pasensa learned advocate.

Mr. Joseph submitted in support of his application which is filed under section (14) (1) of the Law of Limitation Act, that; when the ruling was issued on 2nd April 2019, the applicant applied for copies of the ruling and drawn order. He said, the ruling was received on 18th July 2019, which according to him was three months after the trial court decision. It was his submission further that the ruling contained irregularities because what was to be executed does not agree with the decree. He submitted that this is a good ground for granting of extension of time.

The court was referred to the case of **Zahara Kitindi vs Juma Swalehe and 9 others**, Civil Appeal Application No. 9 of 2016. CA (Unreported) at Pg 19. It was his submission further that the delay was caused by failure on party of the trial court to furnish the ruling in time. According to him, this is sufficient ground to allow this application as held in the case of **Benedict Mумero vs Bank of Tanzania**, Civil Appeal No 12 of 2002, CA (Unreported) at pg. 11

In short he submitted that the delay was caused by failure to get the ruling in time. It was applied for on 12th April, the court received the same letter on 24th April and the ruling was supplied on 18th July 2019 as in annexure AH3. Basing on these reasons, Mr. Joseph learned advocate asked the court to grant this application with costs.

On his party, Mr. Kurubone for the respondent opposed this application. He submitted that there is no sufficient cause shown to grant this application. He submitted that basing on the submission and affidavit of the applicant, the documents applied for in annexure AH3 were the proceedings, not the ruling and drawn order as submitted. According to him, it is not a legal requirement to attach a copy of proceedings. This means, he said, the ruling and drawn order were enough to support the application for Revision. Apart from that, the learned counsel was of the view that there is no proof showing the same were received on 18th July 2019.

Mr. Kurubone went on submitting that the applicant has the duty to account for every day of delay suffered in order to benefit from section 14 of the Law of Limitation Act, as held in the case of **Mwita G. Wamahe vs Andrew Wamahe**, Misc. Application, No. 628 of 2015. HC at Page 9-11

It was submitted further that, for reasons stated to be considered with success, there must be done some diligence in following-up in court to get the decision. In this case, he said, 114 days instead of 60 days, is gross-delay, which should not be tolerated. He referred to the case of **BOT vs Said A. Marinda and 30 others**, Civil Reference No. 3 of 2014, CA (unreported) at pg. 2.

Further, the learned counsel was of the view that since the cases of **Zahara** and **Benedict** (supra), were appeals to the Court of Appeal, attachment of proceedings is a legal requirement which is not the case when appealing to this court. Mr. Kurubone learned advocate asked for dismissal of this application with costs.

By way of rejoinder, Mr. Joseph was of the view that a copy of proceedings was very important in the circumstances of this case. He submitted that the same was needed because the application for execution contained materials that were at variance with the pronounced judgment. It was his submission that the law is silent on attaching the copy of the proceedings. According to him, the case of **BOT** (supra) was decided basing on the fact that there was no reasons for delay advanced, while in this case, sufficient cause of delay has been shown.

He said, basing on illegality in the ruling and failure of the court to supply the proceedings in time, this court, at the interest of justice should grant this application. He said the court has powers to do so under section 79(2) of the CPC because the respondent has nothing to loose. The learned lawyer so concluded.

Basing on the submission of the parties, it is clear from the records that the ruling complained of was delivered on 2nd April 2019 and this application filed on 26th July 2019. This is nearly 4 months from the date of delivery. The reason for delay advanced being failure of the trial court to supply the proceedings, ruling and drawn order. To prove so the applicant attached a letter applying for the same documents. The same was written on 12th April and was received by the District Court on 24th April 2019. This means it took more than 20 days to notify the court that he has not got the proceedings of the matter.

There is no record showing exactly when he was supplied with the ruling, drawn order and the proceedings. It only featured in his submission that the same was received on 18th July 2019. Vetting of documents in record shows, the proceedings were certified on 18th July 2019. The application letter referred was applying for the copy of the proceedings. It did not say anything as to whether copies of the ruling and drawn order were already supplied or not. Worse still, the applicant does not prove the same were supplied on the date alleged. The letter stated only shows he applied for and the other document shows the proceeding was certified on 18th July 2019, which is the date he alleges were supplied to him.

Assuming the same were supplied to him as he submitted, was he justified to file this application out of time. Is that sufficient reason to allow this application. The application is attached with the judgment, decree, ruling dated 2nd April 2019 and the execution proceedings. This being an application. I think, it was important for the applicant to attach the ruling and drawn order if any for that matter, if he aimed at complying with order XL R.2 read with order XXXIX of the CPC. In my view attachment of the proceedings is not a legal requirement.

In **Zahara Kitindi (supra)**, the Court of Appeal held that principles to be considered before granting or rejecting an extension of time, may include;

Accounting for all the period of delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and if the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.

The applicant has cited the above case to support this application, but I am afraid it does not. *First*, taking the record as they are, it took him over 20 days to apply for the proceedings as I have shown above. This is sloppiness. *Second*, he has not shown exactly when he was supplied with the ruling he was intending to challenge. *Third*, the letter attached to the application does not show he applied for the ruling and was not supplied in time.

All these issues combined show the applicant was not diligent enough in taking action. Worse enough, he did not account for all the days of delay.

I am aware that according to Chief Justice's Circular No. 1 of 2016, time to supply the ruling and drawn order or such related documents is 21 days from the day of delivery of the same and 30 days for the proceedings. But all in all, it is the duty of the applicant to prove when the same were supplied to him. In the absence of such proof one finds it difficult to believe he did his duty as required. As held in both cases of **BOT and Zahara Kitindi** (supra) delay should not be inordinate.

Taking by the submission of the respondent, with respect, I agree that the delay of nearly 4 months was unpardonably inordinate. All said and done, the applicant submitted that there is illegality in the decision of the trial court on the award of maintenance, without going into details. I do not see if that is a point of law that may attract attention of the court and allow this application.

Basing on the foregoing reasons, this application falls short of merit. It should be dismissed with costs, as I hereby do.




ACK. Rwizile

JUDGE

02.03.2020

Delivered in the presence of Mr. Samwel Joseph for the applicant, and miss Lulu Marwa for the respondent, this 2nd day of March 2020.




ACK. Rwizile

JUDGE

02.03.2020