

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) MATRIMONIAL APPEAL NO. 6 OF 2020

*(Arising from the Ruling of the District Court of Bunda at Bunda in Miscl. Civil
Application No. 27 of 2019)*

LEVINA JOHN APPELLANT

VERSUS

SELESTINE KAROLI RESPONDENT

JUDGEMENT

2nd and 11th September, 2020

KISANYA. J.:

This appeal arises from the ruling of the District Court of Bunda in Misc. Matrimonial Application No. 27 of 2019. In that decision, the learned trial magistrate dismissed the appellant's application for leave to appeal out of time against the decision of the Kenkombyo Primary Court in Matrimonial Case No. 2 of 2019. Dissatisfied, the appellant has rushed to this court by way of appeal. She is armed with the following ground:

- 1. THAT, the District Court erred in law and fact in failing to take into consideration that, sickness is a sufficient ground for extension of time within to file an appeal out of time.*

Consequently, the appellant is seeking for this Court to allow the appeal, quash and set aside the decision of the District Court and grant her leave to appeal out of time.

This matter was heard inter-parties on 2nd September, 2020. Both parties appeared in person, legally unrepresented. The appellant was given chance to address the court on the merit of the appeal. She just opted to adopt her petition of appeal as

her submission. However, she insisted that, the reason for her failure to appeal in time was sickness. The respondent resisted the appeal. He argued that the appellant failed to prove that she fallen sick by failing to produce medical report. That said, the respondent urged me to dismiss the appeal.

I have considered the argument by the parties as well as the evidence on record. It is settled law that the court has a discretion of granting or refusing the application for extension of time. Such discretionary power, has to be exercised judiciously. I am also live to the settled law that, in considering whether to grant the application or not, the court takes into account the sufficient or good cause that prevented the applicant from filing his/her appeal within the time prescribed by the law. What constitutes to sufficient or good cause is not defined or prescribed by the law. It is decided basing on the circumstances of each case. However, the Court of Appeal has underlined the factors to be taken into account in considering whether the sufficient or good cause has been established. The delay must have been caused by the reason beyond control of applicant and far from his or her negligence. This stank was taken in the case of **Damas Asses and Another vs Raymond Mgonda Paula**, Civil Application No. 32/17 of 2018, CAT at Dar es Salaam (unreported) when the Court of Appeal held that:

“It is however trite law that, in considering whether or not to grant such extension of time, courts take into account the following factors, the length of the delay; the applicant must account for all the period of delay and must show diligence and not apathy, negligence or sloppiness in prosecuting 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.”

Also see: **Tanga Cement vs Jummane D. Masangwa and Amos Mwalandwa**, Civil Application No. 6 of 2001 (unreported).

The judgment subject to the application before the District Court was delivered on 1/8/2019. Therefore, pursuant to the provision of section 20(3) of the Magistrates Courts Act, Cap. 11, R.E. 2019, the appellant ought to have lodged her appeal within thirty days, that is before 1/9/2019. That was not done. She was inclined to file this application after lapse of thirty days, on 1/10/2019. It is deduced from paragraphs 3 and 4 of the affidavit in support of the application that, the appellant fallen sick of malaria and admitted to St. Mary's Kibera Hospital from 20th August, 2019 to 19th September, 2019. The evidence to such effect is letter dated 23rd September, 2019 from St Mary's Kibera Hospital. The respondent countered the said evidence. He deposed in his affidavit that, the sickness was required to be proved by the medical report, discharge form, payment bill and EFD machine receipt.

In her ruling, the learned trial magistrate was convinced that sickness is among of good or sufficient for granting the leave to appeal out of time. However, she held that, the appellant had not proved that she fallen sick on the ground that the discharge summary was not tendered. The learned trial magistrate was of the firm view that, the above named letter from St. Mary's Kibera Hospital was not sufficient to that fact.

This Court reiterates that, that the applicant is duty bound to prove the sufficient cause. Therefore, the applicant who advances sickness as sufficient cause is then required to prove that fact. In my opinion, such fact can be proved by any evidence sufficient showing that the applicant was sick during the period of delay. The appellant tendered letter from St. Mary's Kibera Hospital. The said letter was authored and signed by Dr. Jackson Makashi, Medical Officer In-Charge (M/O I/C) who certified that the appellant was sick and admitted at that hospital. There is no evidence adduced to the effect that the said letter forged or not genuine. The fact that the appellant name was not in the registry book was stated from the bar by

the respondent during submissions. It was not deposed in his counter-affidavit. Since there was no evidence to show that the said letter was not genuine, the trial court ought to have considered that, the appellant was sick from 20th August, 2019 and 19th September, 2019.

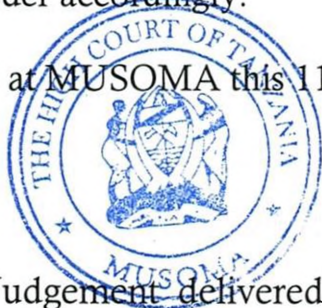
As shown herein above, the application subject to this appeal was filed on 1/10/2019. That was twelve days from the time when she was discharged from the hospital and seven days from when the letter from St. Mary's Kibera Hospital was written. Having considered that the appellant had been admitted for one month or so, I am of the considered opinion that the delay in the case at hand was not inordinate.

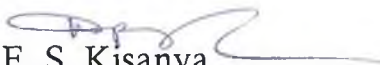
In view of the foresaid reasons, I find the appeal meritorious. I accordingly order as follows:

1. The present appeal is allowed by quashing and setting aside the decision of the District Court of Bunda in Misc. Civil Application No. 27 of 2019.
2. The appellant is granted an extension of 30 days from the date of this order, leave to lodge her appeal against the decision of the Kenkombyo Primary Court in Matrimonial Case No. 2 of 2019.
3. This being a matrimonial issue, each party shall bear its own costs.

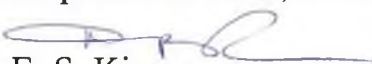
Order accordingly.

DATED at MUSOMA this 11th day of September, 2020.




E. S. Kisanya
JUDGE

Court: Judgement delivered in Chambers this 11th September, 2020 in the presence of the appellant and the respondent. B/C, M. Kimweri- RMA present.


E. S. Kisanya
JUDGE

11/09/2020

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) MATRIMONIAL APPEAL NO. 6 OF 2020

(Arising from the Ruling of the District Court of Bunda at Bunda in Misc. Civil Application No. 27 of 2019)

LEVINA JOHN APPELLANT

VERSUS

SELESTINE KAROLI RESPONDENT

DECREE IN APPEAL

WHEREAS, the appellant filed an appeal against the decision of the Bunda District Court in Misc. Civil Application No. 27 of 2017, praying for the following orders:

1. *THAT, this Appeal be allowed and the Appellant equally be allowed to file an appeal to the District Court out of time.*
2. *THAT, the Ruling of the District Court be quashed and set aside.*
3. *Any other order(s) as this Honourable Court may deem fit to grant.*

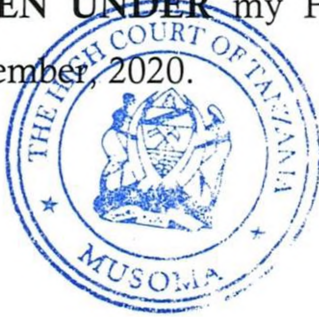
AND WHEREAS on 11th day of **September, 2020** this Appeal is coming for judgment before **Hon. E.S. Kisanya, Judge** in the appellant and the respondent.

THIS COURT HEREBY ORDERS AND DECREES THAT;

1. The present appeal is allowed by quashing and setting aside the decision of the District Court of Bunda in Misc. Civil Application No. 27 of 2019.

2. The appellant is granted an extension of 30 days from the date of this order, leave to lodge her appeal against the decision of the Kenkombyo Primary Court in Matrimonial Case No. 2 of 2019.
3. Each party shall bear its own costs.

GIVEN UNDER my Hand and Seal of the Court this 11th day of September, 2020.




E.S. Kisanya
JUDGE