

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 490 OF 2019

(Arising from decision of the District Court of Kinondoni in Matrimonial

Cause No. 74 of 2016, Hon.Kiliwa, RM, dated 8th May, 2018)

CRESENCIA WILLIAM MNZAVA APPLICANT

VERSUS

LUDOVICK VALERIAN MRUMA RESPONDENT

RULING

06th Oct & 16th Oct, 2020.

E. E. KAKOLAKI J

This is an application for extension of time within which to lodge an application for revision out of time, against the decision of the District Court of Kinondoni in Matrimonial Cause No. 74 of 2016, dated 8th May, 2018 before Hon. Kiliwa, Resident Magistrate. It is preferred under section 14(1) of the Law of Limitation Act, [Cap. 89 R.E 2002] and section 95 of the Civil Procedure Code, [Cap. 33 R.E 2002], supported by affidavit of the applicant **Crecensia William Mnzava**. On the other side the application is not contested as the respondent never appeared in court as result the matter was ordered to proceed ex-parte against him after being served under

substituted service. The application has been argued by way of written submission and the applicant though not represented in court has been enjoying services of Legal and Human Rights Centre limited to drawing of documents only.

Briefly the applicant who had married the respondent way back 2003 under Christian marriage in 2018 filed a petition for orders of divorce decree, division of jointly acquired matrimonial properties and custody and maintenance of the child whom she had begotten the respondent. The two parted their ways in 2009 and since then the applicant had never seen the respondent up to the time of institution of the petition in the District Court of Kinondoni in Matrimonial Cause No. 74 of 2016. Like in the present matter the respondent never entered appearance in the trial court to defend his case the result of which forced the trial to proceed ex-parte against him. During hearing of the petition among other things the applicant claimed joint acquisition of the house but failed to provide its descriptions and prove her contribution towards its acquisition, as a result in its ex-parte judgment dated 08/05/2018, the trial court denied her of her shares in the alleged house. The applicant never appealed against the said decision as a result consulted the court with the view of re-testifying on the description of the said house and her contribution toward its acquisition on the reasons that was not aware of the evidence tendering procedure. The trial court refused her that opportunity as a result consulted the Legal and Human Rights Centre who informed her that she was time barred to file revision hence this application seeking extension of time to file revision out of time which was filed on 16/09/2019.

This court has unfettered jurisdiction to entertain and grant this application for extension of time under section 14(1) of the Law of Limitation Act,[Cap. 89 R.E 2019] upon good cause being supplied by the applicant. As to what amounts to good cause there is no laid down by fast and hard rules as it depends on the reasons advanced by the party seeking an extension. This position of the law is stated in plethora of authorities on of which is **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, (CAT-unreported) cited with approval in the case of **Andrew Athumani Ntandu and Another Vs. Dustan Peter Rima** (As Legal Administrator of the Estates of the Late Peter Joseph Rima), Civil Application No. 551/01 of 2019 (CAT-unreported) where the Court of Appeal stated:

“What constitutes good cause cannot be laid down by any hard and fast rules. The term “good cause” is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion.”

In another case when discussing on what amounts to good cause the Court of Appeal in the case of **Jumanne Hassan Bilingi Versus The Republic**, Civil Application No. 23 of 2013 (Unreported) said:-

“In essence, what amount to good cause is upon the discretion of the Court and it differs from case to case. But, basically various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time”.

It is also trite law that when discharging this duty of assigning good cause to the court for it to exercise its discretion judiciously a party has to assign reasons of what prevented him/her from pursuing the appeal or application timely. In the present matter, the applicant in discharging that mandatory duty stated in her affidavit that, after delivery of the judgment she approached the trial court seeking another chance to tender evidence on the description of the house alleged jointly acquired together with the respondent but was denied with that right. She deposed further that, that is when she approached the Legal and Human Rights Centre on November 2017 who after going through the documents informed her that was time barred to apply for revision hence this application. She alleges the revision stands a better chance to succeed. And further that, it is in the interest of justice this application be granted so as to allow her challenge the trial court's decision the result of which is to provide her with another chance to prove her case.

I have carefully considered the reasons advanced by the applicant in support of his application. As alluded earlier it behoves her to supply reasons that delayed her to file the revision and finally this application. The judgment sought to be challenged in the intended revision was delivered on 08/05/2018 and this application for extension was filed on 16/09/2019, one year and four months passed. There is no reasonable explanation for such inordinate delay. The applicant in paragraph 6 of her affidavit is saying she approached Legal and Human Rights Centre on November 2017, six (6) months before delivery of the judgment where she was told the time for filing revision was out the advice that moved her to file this application. There

is no possibility that she could have sought that advice before delivery of judgment. Even if we are to believe that she got legal advice in November 2018 and not 2017, up to 16/09/2019 when this application was filed more than nine (9) months had passed which to me is inordinate period of time. It was expected of her to account on each and every day that passed before institution of this application as it was stated in the case of **Alman Investment Ltd Vs Printpack Tanzania and Others**; Civil Application No. 3 of 2003 (Unreported) that;

"Applicant ought to explain the delay of every day that passed beyond the prescribed period of limitation."

There is nowhere in the affidavit the applicant has assigned reasons for such inordinate delay nor has she advanced any other prevailing circumstances that would amount to good cause to warrant this court exercise its jurisdiction to grant her extension of time. For the foregoing reasons there is no doubt that, the applicant has failed to account for the delay of every day that passed beyond the prescribed period of limitation.

That being the position, I am satisfied and therefore inclined to hold that the applicant has failed to established good cause to warrant this court exercise its discretion to grant the application. This application therefore has no merit and is hereby dismissed.

This being a matrimonial case, I order no costs to any party.

It is so ordered.

DATED at DAR ES SALAAM this 16th day of October, 2020.

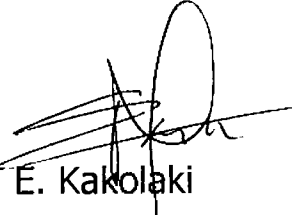


E. E. KAKOLAKI

JUDGE

16/10/2020

Delivered at Dar es Salaam today on 16/10/2020 in the presence of the applicant and Ms. Lulu Masasi, court clerk and in the absence of the Respondent.



E. E. Kakolaki

JUDGE

16/10/2020