

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 41 OF 2020**

**(Originating from Application for Execution in Matrimonial Cause No. 10 of 2015)**

**JANETH MABULA MUYA.....APPLICANT**

**VERSUS**

**JUSTIN JACKSON SWAI.....RESPONDENT**

**RULING**

***02/09/2020 & 26/11/2020***

***GWAE, J:***

Before this court is an application for extension of time preferred by the applicant under section 14 (1) of the Law of Limitation Act Cap 89 R.E 2002. The applicant is seeking an order extending time to enable him to file an application for revision out of time. The same is supported by an affidavit, duly sworn by the applicant. In addition, the applicant has filed written submission to expound her mission. The application has, however, been resisted by the respondent through his sworn counter affidavit as well as written submission in opposition.

For better appreciation of this application, I find it apposite to explore the factual facts giving rise to the application which may briefly be recapitulated as follows;

The applicant herein above was a Judgment Debtor in an application for execution in Matrimonial Cause No. 10 of 2015 whereas the respondent was the Decree Holder. After the respondent had filed the said application for execution the applicant also filed a cross claim under the same application against the respondent. The cross claim was heard and partly determined in favour of the applicant. The applicant was dissatisfied by the ruling in a cross claim and thus filed an appeal to the High Court vide Civil Appeal No. 23 of 2019. After filing the appeal to the High Court, the applicant came to learn that the proper remedy in opposing a ruling and drawn order in applications for execution is revision and not an appeal. Consequently, Civil Appeal No. 23 of 2019 was withdrawn at her instance and since the time to file revision was no longer in her favour in filing an application for revision, the applicant has come to this court praying for the enlargement of time to file revision out of time.

At the hearing of this application before me, the applicant was represented by **Mr. Ally Mhyellah**, learned Advocate, whereas the respondent enjoyed legal services of **Mr. Alpha Ng'ondya**, advocate. The application was disposed of by

way of written submissions and the counsel filed their submissions as ordered by the court.

I have objectively considered and weighed the rival submissions from both parties. To begin with, I feel it is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application for extension of time is entirely in the discretion of the Court. But such discretion power is always a judicial function, so it must be exercised according to the rules of reason and justice and the overriding consideration is no other than "sufficient cause" for doing so. **See Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 1 of 2002 (Unreported).

Applications of this nature are also decided depending on the circumstances of each case as there are no hard or fast rules on what amounts to sufficient cause. However, from a number of decided cases a number of factors have to be taken into consideration including whether or not the application has been brought promptly, length of the delay, degree of prejudice to the respondent and the legality of the decision intended to be challenged. In the case of **Mbogo vs. Shah** [1968] EA the defunct Court of Appeal for Eastern Africa held thus:-

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an

arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

With respect to the guiding principles, I am of the considered view that in the instance case the delay is a technical one and not an ordinary delay. I am of this view simply because the records clearly show that the applicant had filed her appeal to the High Court within time, and later on discovered that she had wrongly persuaded her grievance, and decided to withdraw the matter so that she can properly challenge the ruling through a revision. I think the misdirection by the applicant in prosecuting her dissatisfaction of the decision by the executing court cannot be used to determine the timeousness of applying for revision. I describe my holding to the case of **Fortunatus Masha v. William Shija & another**, [1997] TLR 154 where a distinction was made between actual delays and technical delays. It was held that;

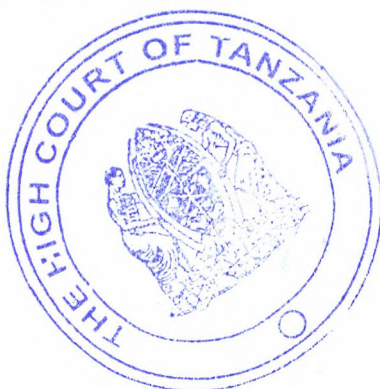
"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted."


As stated above, applications of this nature are decided depending on the circumstances of each case, now it suffices to say that, each case is decided according to its own set of facts. Following the bestowed powers of this Court in granting extension of time, I am therefore of the considered view that the applicant has shown good cause to that effect.

I have also considered a number of days from when the applicant's appeal was withdrawn that is on 21/04/2020 to when this application was filed that is on 29/04/2020) **(8 days)** and I am persuaded that the applicant acted diligently and expeditiously in filing this application. It is also my observation that the respondent will not be prejudiced if this application is granted compared to decree of prejudice to the applicant if the grant is refused.

Accordingly, I find the merit of this application and order that an application for the intended revision shall be filed within **ten (10)** days from the date of delivery of this ruling. Costs of this application to be in the course.

It is so ordered.



  
**M.R. GWAE**  
**JUDGE**  
**26/11/2020**