

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA**  
**AT ARUSHA**

**MISC. CIVIL APPLICATION NO 21 OF 2020**

*(Originating from Simanjiro District Court Civil Case No 2 of 2017)*

**LAIBONI @ ASKOFU ..... APPLICANT**

**VERSUS**

**LEMOMO MOLLEL ..... RESPONDENT**

**RULING**

18/11 & 11/12/2020.

**MZUNA, J.:**

The applicant herein, Laibon @ Askofu, seeks before this court for enlargement of time within which to file an appeal against the decision of Simanjiro District Court in Civil case No. 2 of 2017. It is supported by a sworn affidavit of the applicant herein, Laibon s/o Askofu. This application has been preferred under section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2002.

Mr. Samson Lumende, learned counsel represented the applicant while the respondent enjoyed the services of Mr. Lengai S. Loitha, also learned counsel. Hearing proceeded orally.

The main issue is whether the delay was with sufficient reason for the delay.

Arguing in support of the application in line with the filed affidavit, the applicant's counsel stated that, the delay was caused by legal technicalities and not contributed by their negligence. He claimed that, immediately after the judgment was delivered, he filed Civil Appeal No 26 of 2018, but it was struck out after the respondent's counsel raised preliminary objection which was sustained by the court. Thereafter he filed Misc. Civil application No. 103 of 2019, which was struck out but the court granted 14 days to file a fresh application.

The second point touches on irregularity. The applicant says there are some irregularities in Civil Case No 2 of 2017 concerning the issue of jurisdiction because the matter concerned adultery which ought to have been dealt with the Primary court based on S. 75 of the **Law of Marriage Act**, Cap 29 R.E 2019 which gives powers to Primary court for matters which arose from Customary or Islamic marriage. He cited the case of **John Kahamila vs Paskal** [1986] TLR 104 which decided that, claim of adultery for customary marriage must be heard by the Primary court. For that reasons, he prays for this application to be granted.

On his part, the respondent strongly disputed the application on grounds that the applicant has neither demonstrated sufficient cause nor shown the likelihood of success of the intended appeal.

He referred to the cases of **Samson Kishosha Gabh vs. Charles Ngongo Gaba** [1990] T.L.R 133 and **Mirishi Meishaa vs. Edward Ngitoria**, Misc. Civil Application No. 14 of 2019, High Court Arusha Registry, (unreported). That, the applicant was negligent that is why his previous appeal and application was struck out for being incompetent. That, there is no marriage certificate presented at trial court to prove it was a Christian marriage therefore the alleged want of jurisdiction has no merit. They prayed for this application to be dismissed with costs.

In brief rejoinder, the applicant's counsel insisted that it was not their negligence not to file this appeal timely. If there are some elements of negligence on the part of advocate it cannot be used to punish an innocent party as its was so held in the case of **Judith Emmanuel Lusohoka vs. Pastory Binyura Miekule & 4 Others**, Misc. Land Case No 74 of 2018, High Court of Tabora (Unreported). That, since there is an overwhelming chances of success in the intended appeal, he prayed for the court to grant the application.

The background story shows, the issue subject for appeal involved a claim for adultery. The applicant herein was the defendant whereas the respondent was the plaintiff. The claim was for Tshs 80,000,000/= being specific damages for committing adultery with his wife. It was decided in favour of the respondent herein, and the applicant was ordered by the court to pay the respondent herein Tshs 42,800,000/= (itemized as Tshs 9,000,000/- for specific damages while Tshs 33,800,000/- was for other general damages) and the costs of the suit.

The point for determination is whether the applicant has demonstrated good or sufficient cause for the delay to file the application within the 14 days granted by the court.

Section 14 (1) of the Law of Limitation Act, provides that;

*"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or application, other than an application for execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for."*

The above provision gives the discretion to this court to grant extension of time upon *"sufficient cause" being shown*". According to the

applicant reasons for this court to allow the application are based on technical grounds, chances of success as well as issue of jurisdiction. The respondent filed a counter affidavit resisting the application on two grounds. **One**, that the applicant did not attach any exhibit to prove the contents of paragraph 6,7,8,9,10,11,12,13 &14; And, **two**, that he has no chance of succeeding in his intended appeal, his intention is just to hinder the respondent from executing a judgment of trial court on time. That it is just a delaying tactic.

I am aware, that an application for extension of time is entirely in the discretion of court which however must be exercised judicially. On the issue of technicalities, it was held in the case of **Fortunatus Masha vs. William Shija and Another** [1997] T.L.R 154, CAT 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."*

The above cited case law, cements the idea that technical delays are excusable, which is one of the grounds raised by the applicant. Other factors along with issue of illegality as one of the sufficient cause to allow extension of time have been well stated in the case of **TanESCO vs. Mufungo Leonard Majura And 15 Others**, Civil Application No. 94 of 2016, CAT at DSM (unreported) at page 10 where the court cited with approval the case of **Lyamuya Construction Company Ltd Versus Board of Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 where it was stated;

*a) The applicant must account for the delay for the period of the delay.*

*b) The delay should not be inordinate.*

*c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,*

***d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.***

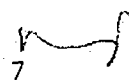
(Emphasis mine).

As above noted since the issue of illegality has been raised, along with the fact that there is no inordinate delay, the points raised constitute sufficient cause to grant the application. The respondent says the application should not be allowed for the simple reasons that the applicant did not attach those decisions to prove that his delay was a technical one. This argument with due respect is baseless. He never said the allegation is not true.

It is my view that the delay is not an inordinate delay as the judgment sought to be challenged is of March 2018 the present application is of 11<sup>th</sup> March 2020, and is preceded with other applications in between which were struck out on technicalities. The application has been made in good faith as the first application was well within time.

I see no prejudice that the respondent may suffer if this application is granted. The allegation by the respondent that he should be allowed to execute is by itself not proof that there will be prejudice after being heard in the intended appeal, as the said right to execute will remain in case he succeeds in the said appeal.

This is a fit case where a point of law on the illegality or otherwise of the awarded sum should be determined.

A handwritten signature in black ink, consisting of a stylized 'r' followed by a flourish.

For the above stated reasons, leave to file appeal out of time is granted. The same should be filed within 30 days from today. No order for costs.



**M. G. MZUNA,  
JUDGE.  
11/12/2020.**