

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT OF SHINYANGA  
AT SHINYANGA**

**MISC. CIVIL APPLICATION NO.32 OF 2018**

*(Arising from Matrimonial Appeal No.1/2018, Kahama District Court and Original  
Matrimonial Cause No.77 of 2017, Kahama Urban Primary Court)*

**HOSEA PAUL.....APPLICANT**

**VERSUS**

**BLANDINA CYPRIAN.....RESPONDENT**

**RULING**

*23/03 & 17/04/2020*

**G. J. Mdemu, J.;**

This is an application for extension of time to appeal to this court challenging the decision of Kahama District Court in matrimonial appeal No.1/2018. The application preferred under the provisions of section 14(1) of the **Law of Limitation Act, Cap.89**, and which is supported by the affidavit of the Applicant one Hosea Paul, is on the following orders:

- 1. This honorable court be pleased to grant the Applicant an extension of time to file his appeal out of time.*
- 2. Costs to follow the event.*
- 3. Any other relief(s) that this honorable court deem fit and just to grant.*

On 23<sup>rd</sup> of March 2020, this application came for hearing. Both the Applicant and the Respondent appeared in person arguing the application. The Applicant, along with his prayer to have his affidavit sworn on 29<sup>th</sup> of

August 2018 be adopted, he submitted further that, he delayed to appeal in time because there was a time when he was apprehended by state machinery and therefore he had to use much of his time to pursue reasons towards his arrest. It is on those premises, the Applicant added, time to appeal got lapsed. He urged me therefore to allow his application, more so, that the appeal has overwhelming chances of success.

The Respondent, while resisting the application, asked this court to adopt her counter affidavit sworn on 2<sup>nd</sup> of October 2018 as part of her submission. She also added that, the grounds are unfounded in that if the Applicant managed to follow up those criminal cases, there was no reason for not pursuing his appeal in time. She told the court that, the application has no merit thus prayed its dismissal.

I have taken into account submissions of the parties in this application, together with the affidavit of the Applicant and counter affidavit of the Respondent. According to the depositions of the Applicant in the affidavit, specific in paragraphs 4 and 5, there is what the Applicant submitted as grounds for extending time. The two paragraphs are reproduced as follows:

- 4. That the delay in filing the appeal was not in any how caused by me, but the Respondent who fabricated a criminal case against me vide police case No.KAH/IR/236/081 which was draining me economically, financially, physically and it consumed most of my time to save myself from police brutality and injustice.*
- 5. Apart from explanation above in foregoing paragraph for purposes of saving from executed criminal charges, I was forced to*

*travel three times to Dar es Salaam to seek help from IGP of Police  
Mr. Simon Sirro and finally to the President of Tanzania.*

In her submission and also through her counter affidavit, the Respondent resisted generally the two paragraphs of the affidavit. According to the record, the decision of the District Court to be appealed was delivered on 13<sup>th</sup> of April 2018. The Applicant has not been specific in his affidavit as to when he was engaged in those criminal charges as to require him to concentrate on instead of appealing. He has equally not annexed those travel tickets as promised in the affidavit.

I am aware that, extending time to appeal is not automatic and in terms of the provisions of section 14(1) of the **Law of Limitation Act, Cap.89**, the court have discretionary power to do so upon sufficient and or reasonable cause. The section is reproduced as hereunder:

*“14(1) 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 an 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 such appeal or application.”*

That being the legal position, elsewhere, it is trite law that, the discretion has to be exercised judiciously, of course capped with reasonable and sufficient cause. Having this in mind, and due to the saga involved in this matrimonial dispute, and in the interest of substantive justice and most probably putting litigations to finality, I am minded to allow this application, as I hereby do.

In that stance, time to appeal to this court is extended for a period of thirty (30) days from the date of this ruling. Due to the nature of this application arising from matrimonial dispute, order as to costs is hereby refrained.

Order accordingly.

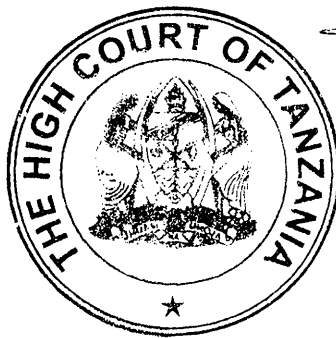
  
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**Gerson J. Mdemu**

**Judge**

**17/4/2020**

**DATED at SHINYANGA this 17<sup>th</sup> day of April, 2020.**



  
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**Gerson J. Mdemu**

**Judge**

**17/4/2020**