

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

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC CIVIL APPEAL NO. 22 OF 2019**

*(Arising from District Court of Kibaha in Misc. Civil Application No. 14 of 2018*

*Originating from Mkuza Primary Court in Matrimonial Cause No. 11 of 2018)*

**MIKI ABASI KIPA ..... APPELLANT**

**VERSUS**


**REHEMA STEVEN ..... RESPONDENT**

**JUDGMENT**

20<sup>th</sup> May & 30<sup>th</sup> June, 2021

**BANZI, J.:**

Before the Primary Court of Mkuza, the Respondent successfully filed for divorce, distribution of matrimonial properties and maintenance of children. Following the judgment, and since the time to appeal had lapsed, the Appellant filed an Application for extension of time under section 20 (4) (a) of the Magistrates Court Act [Cap. 11 R.E. 2002] and rule 3 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, GN No. 312 of 1964. In its ruling, the District Court of Kibaha after concluding that the Appellant had good reason for grant of extension of time, it went further and determined the merit of the intended appeal in a view of finding whether the appeal has overwhelming chances of success. At the end, it



dismissed the application by a finding that, the appeal has no overwhelming chance to succeed. Aggrieved with that decision, the Appellant appealed to this Court with five grounds which boil down into one complaint that, the Resident Magistrate erred in law by determining the merit of appeal in application for extension of time.

At the hearing of the appeal, the Appellant appeared in person unrepresented, whilst the Respondent enjoyed the services of Mr. Michael Kasungu, learned counsel. By consent, the appeal was argued by way of written submissions.

Arguing in support of the appeal, the Appellant submitted that, he was denied his right to appeal which is enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania. Expounding his point, he submitted that, the District Court acted improperly by refusing to grant him extension of time although it had already concluded that, he has good cause behind the delay. He added that, the concept of chances of success was badly misconceived because the District court prematurely determined the substance of the appeal which was not before it. Thus, by doing so, it acted contrary to the principle of natural justice as he was denied the right to be heard. In that regard, he prayed for the appeal to be allowed with costs by quashing and setting aside the ruling and order of the District Court.



On the other hand, Mr. Kasungu strongly resisted the appeal. Basically, he mentioned the factors to be considered in granting extension of time as pronounced by the Court of Appeal in unreported cases of **Lyamuya Construction Company Ltd v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015. He further argued that, in the matter at hand, the Appellant failed to account for 50 days of delay after he had obtained copies of the judgment, and hence, the delay was inordinate. He added that, it is an established principle that, in determining application for extension of time, it is also important to determine whether there would be an arguable case on appeal. Thus, the District court was not at fault in deciding that, the intended appeal has no overwhelming chances to succeed. To support his point, he cited the case of **Mbogo v. Shah** [1968] EA 93. To conclude his submission, he argued that, the right to appeal although it is constitutional but not automatic as it requires adhere to certain legal requirements something which the Appellant failed to adhere. Therefore, he prayed for the appeal to be dismissed with costs and the ruling of the District Court be upheld.



In his rejoinder, the Appellant apart from reiterating his submission in chief, he submitted that, the Respondent has argued about the account for the delay which was not an issue in the ruling of the District Court. Besides, he distinguished the cited case of **Mbogo v. Shah** claiming that, the issue whether there is arguable case is determined by looking at the intended grounds of appeal and not by going through the evidence. In that regard, he prayed for appeal to be allowed with cost by granting him leave to appeal out of time.

Having carefully considered the lower court records and the submissions by both sides, the main issue for determination is whether the District Court was right to determine the merit of appeal after finding that there was good/sufficient cause for the delay.

It is worthwhile noting here that, an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. Refer to the case of **Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227. It is also vital to underscore that, there is no hard and fast rule on what constitute sufficient cause. In **Lyamuya Construction Company Ltd v. Board of the Registered Trustees of Young Women's Christian Association of**



**Tanzania** (supra), the Court of Appeal of Tanzania highlighted the following guidelines for grant of extension of time; (a) the applicant must account for period of delay; (b) the delay should not be inordinate; (c) applicant must show diligence; (d) existence of point of law such as illegality of the decision sought to be challenged. Moreover, in **Mbogo v. Shah** (supra) the defunct Court of Appeal for Eastern Africa considered various factors to be taken into account including whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended.

In the matter at hand, the District Court having discussed the factors to be considered in application for extension of time and the discretion to grant the same, the learned Magistrate among other things said;

*"... there is no doubt that the applicant applied for the copies of Judgment and proceedings and the same was filed on 04/04/2018 which was the fifth day from when the judgment was delivered. In his letter he had shown an intention to appeal against the trial Court decision. However, from the proceedings it is clear that the certified copies were signed on 02/08/2018. Hence **I agree with the applicant that he has good reasons for the grant of the application for extension of time.** However, before doing so the court have to determine if the appeal has overwhelming chance to succeed". (Emphasis supplied).*



It is apparent from the extract above that, the learned Magistrate was satisfied over the reason advanced by the Appellant which caused the delay. As it is shown in the extract, the Appellant was delayed to file the appeal because he had not obtained requisite documents. By that finding, the learned Magistrate could have ended there because that constituted sufficient cause for the delay. Nevertheless, the court went further and began to evaluate the evidence on record as if the main appeal has been heard accordingly. I am aware that, overwhelming chances of success is amongst the factor which may be considered in determining sufficient cause. This was stated in the case of **Omary Shabani Nyambu v. Dodoma Water and Sewerage Authority**, Civil application No. 146 of 2016 CAT (unreported). However, this is done by perusing the impugned judgment and not by re-evaluating the trial evidence and subjecting it to a critical scrutiny as it has been done by the District Court. By doing so, the learned Magistrate determined the appeal on merit without affording a right to be heard to the parties. Thus, I am constrained to agree with the Appellant that, this is against the principle of natural justice. In that regard, it is the considered view of this Court that, the District Court was wrong to re-evaluate the trial court evidence and determined the intended appeal on merit on a disguise of determining if the appeal has overwhelming chances of success.



In the upshot, I find the appeal with merit and I hereby allow it. Consequently, I quash the ruling in Civil Application Number 14 of 2018 before District Court of Kibaha. The Appellant is hereby ordered to file his appeal before District Court of Kibaha within thirty (30) days from the date of delivery of this judgment. Owing to the nature of the matter, each party shall bear its own costs.

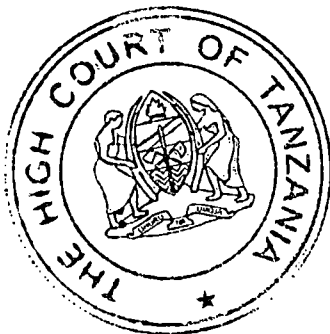
It is so ordered.



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**I. K. BANZI**  
**JUDGE**  
**30/06/2021**

Delivered by the Deputy Registrar this 30<sup>th</sup> June, 2021 in the presence of the Appellant and in the absence of the Respondent.



A handwritten signature in black ink, appearing to be "I. K. Banzi", written over a horizontal line.

**I. K. BANZI**  
**JUDGE**  
**30/06/2021**