

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

PC CIVIL APPEAL No. 07 OF 2020

CLARENCE MSAFIRI.....APPELLANT

VERSUS

SOFIA B NJOKA.....RESPONDENT

(Appeal from the decision of the District Court of Ulanag at Mahenge)

(Ndeko- Esq, RM.)

dated 17th December, 2019

in

Misc. Civil Application No. 8 of 2019

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JUDGEMENT

16th November 2020 & 20th January 2021

AK. Rwizile, J

The appellant and respondent lived as husband and wife before their marriage collapsed. On 15th September 2017, their marriage came to an end following a decree issued by Vogoi Primary Court. Custody of the children of marriage was given to the respondent accompanied with an order for maintenance. Family assets were also divided among them.

Despite being aggrieved by the decision, the appellant did not appeal in time. About 2 years later, that is in 2019, he applied for extension of time to appeal out of time. On 17th December 2019, the District Court of Ulanga dismissed his application for failure to account for delay. He was aggrieved by the said decision. He has now appeared before this court appealing on the same. His memorandum of appeal contains four grounds of appeal. But upon scrutiny one ground of appeal is evident and may be coached thus;

That the learned Resident Magistrate erred in law and fact for failure to consider reasons for delay advanced by the appellant.

The appellant appeared in person but the respondent enjoyed services of Uti Mwang'amba and Jane Joseph Kapufi advocates. The appeal was argued orally. The appellant when given a chance to submit on reasons for delay. He submitted on why he was aggrieved by the decision of the trial court. But when rejoining he was of the view that his child was sick for about 1 year, and was busy attending him, from one hospital to another. When that was over, he realized time to appeal had elapsed. This, according to him, is the only reason leading to all this delay.

Ms Kapufi for the respondent was of the opinion that the District Court was right in dismissing his application. It was argued that the appellant did not account for all days of delay as the law requires. In this, she was supported by the case of **Tanga Cement vs Jumanne D. Masangwa**, Civil Application No. 6 of 2001, and the case of **Mathias Rutaguza and Another vs Judith Ndaba**, Misc. Civil Application No. 91 of 2018.

The court held, according to her, that the reasons for delay must be looked at and that the applicant has to account for all days of delay. According to her, the District Court heard reasons for delay. Upon properly examining the same, his application was dismissed. It was submitted further that there was no proof that the child was sick for all that period. This court was therefore asked to dismiss this appeal.

Having heard the arguments from the parties, it is important to note that to grant or reject an application for extension of time, is an absolute discretion of the court. In incidences where the layman is presenting the case as it has been here and before the District Court, we have to have in mind that though rules should not be relaxed but arguments advanced must be treated with care. The appellant has as I have shown before advanced one reason that he was attending a sick child. He faulted the reasoning of the District Court on ground that it only relied on the evidence of the respondent to dismiss his application.

I have visited the proceedings of the District Court. According to the record, the learned Resident Magistrate was of the view that since the decision was delivered on 15th September 2017 and the child was admitted on 17th January 2019 and discharged two days later, then there was no sufficient reason for delay.

I have to say here that, all what was required of the appellant is to show a chronological or chain of events that led to delay. The recording is clear and speaks for itself. The decision of the trial court was delivered as shown in 2017. It was done in the presence of the appellant.

The records as to when the child became sick is not clear. It only shows he was admitted for two days from 17th January 2019. That means after an amount of time from 2017 to 2019 sickness of the child was evident. Above all, that was done for two days. From the normal look of things, it does not need a trained person to show the court when the child started treatment and when it ended, the time he was admitted and time he was discharged. Time and again this court has remarked that there must be an end to litigation. It would be absurd to let rules of limitation apply at the pleasure of litigants.

As to what should be considered to grant or deny extension of time, authorities are not in short supply. Apart from the case of **Lyamuya Construction Company Ltd v Registered Trustees of the Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (CAT-unreported), which the District Court relied upon to dismiss the application, still the principles stated therein were elaborated and followed in the case of **Joel Silomba vs R**, Criminal Application No.5 of 2012. Where it was clearly stated by the Court of Appeal on issues to consider;

- i. the length of the delay;
- ii. the reason for the delay: was the delay caused or contributed by the dilatory conduct of the applicant?;
- iii. whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged; and/or
- iv. the degree of prejudice to the opposite party if the application is granted

if I were to go through every item among the four tests stated above, one could not find that the appellant passed any. The length of time taken is nearly two and half years, from 2017 to 2019. The reasons for delay, the appellant did not advance any, apart from the sickness of his child. As to whether there is a point of law, as I said before, the appellant being a layman one does not expect him to raise serious issues of law. That has taken me to pass through the trial court judgement with health eyes. I went through orders passed. From the face of the same and without going deep into the same there is nothing that suggests such things like a point of law for the immediate attention of the court. Lastly, I do not see how he will be prejudiced in terms of degree compared to the respondent.

From the foregoing, I have to state clearly that despite having failed to advance any strong reason for delay, still the application was shockingly out of time. I do not see therefore where to fault the reasoning and holding of the learned Resident Magistrate. I therefore find this appeal without merit. It is entirely dismissed without costs.

AK Rwizile
JUDGE
20.01.2021

 Recoverable Signature
X 
Signed by: A.K.R.W. IZILE

