

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF KIGOMA
AT KIGOMA
APPELLATE JURISDICTION
(PC) CIVIL APPEAL NO. 1 OF 2021

(Arising from Misc. Civil Application No. 02/2020 of the District Court of Kigoma before Hon. K. V. Mwakitalu, Original Civil Case No. 200 of 2019 at Ujiji Primary Court before Hon. M.J. Luchunga)

NURU S/O PAULO APPELLANT

VERSUS

MWINGEREZA S/O NYOTA.....RESPONDENT

JUDGMENT

01st & 01st March, 2021

A. MATUMA, J

The appellant is aggrieved by the decision of the District Court of Kigoma which denied her extension of time to appeal out of time against the decision of the Ujiji Primary Court in a Civil suit No. 200/2019 between the parties.

The appellant has raised only one ground in this appeal that;

"The magistrate erred in law and fact by holding that the appellant had not adduced sufficient reasons for extension of time while the appellant advanced sufficient causes to warrant extension of time"

At the hearing of this appeal, Diana Damson learned advocate represented the appellant while the respondent appeared in person. The learned advocate for the appellant submitted on the ground of appeal repeating the submission she made in the District Court that the appellant is a widow who faced financial constraints which resulted into her failing to appeal in time. She cited to me the case of **Yusufu Same and Another v. Hadija Yusufu, Civil Appeal No. 1 of 2002 (CAT)** to back up her arguments that being a widow who faces financial constraints is a sufficient cause for the delay and extension of time. The Respondent did not have much to argue but simply maintained that being a widow should not warrant violation of the law.

He argued that even himself lost his wife and thus a widower but that could not be used as a reason to contravene the requirements of the law.

He was also of the argument that, the appellant is not so poor to the extent of failing to pay court fee which is almost Tshs. 10,000/= in the District Court.

Having heard the submission of both parties as herein above summarized and perusing the records of the lower court, I am of the view that t

learned magistrate was right in holding that being a widow in itself is not sufficient ground for extension of time and that for one to be extended extension of time by reasons of economic hardships, he she has to establish such economic hardships and the manner it prevented him or her to take necessary actions in time.

In the instant matter, the learned magistrate refused to grant extension of time because there was no proof that the appellant was really poor and depended on legal aid in drafting the documents. He considered the fact that she had an advocate before the court who did not establish vividly that she acted on pro bono basis after being appointed by TLS for the purpose as she alleged. Also, that the appellant had paid court fee at the tune of Tshs. 50,000/= and did not disclose the source of that amount if at all she was poor.

It is my firm finding that an affidavit dully sworn is in itself evidence wealthy to be considered unless sufficiently contravened.

In the District Court, the appellant vide paragraph six (6) of her affidavit deposed economic hardships as one of the reason for her delay to lodge the petition of appeal as she could not pay court fees for the same.

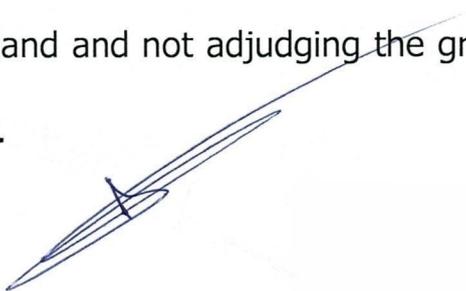
In his counter affidavit, the respondent through paragraph five (5) which countered paragraph six of the appellant's affidavit did not dispute that

really the appellant suffered economic hardships. As between the respondent and the magistrate, it was the respondent who was better positioned to state the economic status of the appellant as they knew each other and had even a Hire purchase contract of the vehicle in dispute.

Since the appellant deposed her economic hardship, and the respondent did not dispute as such, that constituted sufficient cause for the delay as it was held in the case of **Yusufu Same and Another versus Hadija Yusufu, Civil Appeal No. 2 of 2002 (CAT) at Dar es Salaam** which was cited to me by Advocate Diana that;

'We are aware that financial constraints are not sufficient ground for extension of time. See Zabitis Kawuka v. Abdul Karim (EACA) Civil Appeal No. 18 of 1937. But in the circumstances of this case at hand, where the respondent was a widow, depending on legal aid her plea of financial constraint cannot be held to be insignificant'

In the circumstances, the learned magistrate ought to have considered the plea of poverty as the cause for the delay in the circumstances of the case at hand and not adjudging the ground of poverty in its general overview.

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The appellant has even in the instant appeal obtained exemption for paying court fees under Rule 9 of Court fees Rules G.N. 247 of 2018 by the Deputy Registrar of this Court Hon. Anord J. Kirekiano. This was done after satisfying the Registrar of her incapacity to pay the relevant fees.

Therefore, it was wrong for the magistrate in the District Court to consider the payment of court fees at the tune of Tshs. 50,000/= by the appellant as a fact denying her pleaded financial constraints. He ought to have inquired on it by according opportunity to the appellant to explain how did she got it. Adjudging on it without hearing her amounted to adjudging someone unheard which is bad in law.

The holding in the District Court thus based on speculative views that the appellant was financially stable and could thus draft the documents in time and file the same after paying the due court fees.

Allowing speculative views to affect the decision is bad in law as it was held in the case of **Materu lesion and J. Foya versus R. Sospeter (1988) TLR 102.**

In the circumstances of the herein observations I hold that this appeal has been brought with sufficient cause and I allow it. In my absolute discretion, I extent thirty days (30) from today within which the

appellant to lodge her appeal to the District Court. Considering the fact and circumstances of the matter, I grant no cost to either party. Right of further appeal explained.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Matuma", is written over a diagonal line.

A. Matuma

Judge

01/03/2021