

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

(PC) CIVIL APPEAL NO. 4/2021

(Arising from Misc. Civil Application No. 10/2020 of Kasulu District Court, before Hon. I.D. Batenzi – RM. Originating from matrimonial Cause No. 9/2019 of Kasulu Urban Primary Court, before Hon. H.H. Nyumbamkali)

HAMISI KIBEGWA..... APPELLANT

VERSUS

HELENA RUBAVU.....RESPONDENT

J U D G M E N T

24th March & 22nd April 2021

I.C. MUGETA, J.

The appellant was aggrieved with the decision of the Kasulu District Court which dismissed his application for extension of time to appeal out of time against the decision of Kasulu Urban Primary Court in Matrimonial Cause No. 9/2019. He has appealed to this court and the petition of appeal is founded on five grounds of appeal.

Firstly, that all of his grounds were not considered by the District Court Magistrate. Secondly, that the District Court Magistrate dismissed his application without explaining the right to appeal. Thirdly, that the District Court Magistrate failed to consider the argument of the appellant instead decided the matter basing on the weak submission of the respondent.

Mgeta

Fourthly, that the District Court Magistrate disregarded the economic status of the applicant which was caused not to appeal in time and fifthly, that the appellate magistrate erred to grant costs to the appellant regardless his economic difficulties. The same were opposed by the respondent through her petition in reply.

During hearing, both parties appeared in person unrepresented. The appellant prayed this court to adopt his petition of appeal and the respondent made the same prayer regarding her reply to petition of appeal.

Starting with the first, third and fourth grounds which are similar and the complaint is that the appellant's grounds to support his application were not considered, the grounds advanced for delayed appeal par paragraph 4, 6 and 7 of the affidavit are that the appellant had no financial means to meet legal services.

It is my view that the District Court considered this ground and concluded that the same could not amount to sufficient cause to allow him extension of time. Therefore, it is not true that his grounds for delay was not considered. Except for reasons to be recorded, financial constraint has never been a reason to grant extension of time to appeal out of time. The District Court did not err to dismiss the application.

The complaint in the second ground is that right of appeal was not explained. However, the proceedings of the District Court show that the right of appeal was explained. This ground also lacks merit too.

On the fifth ground that the costs imposed upon the applicant was without considering his economic status, it is my view that costs are awarded at the concerned court's discretion and they always follow the event. The complaint has no merit too.

In the event, I hold that no good cause was disclosed to enable the District Court to exercise its discretionary powers to grant the extension of time sought. The application was rightly rejected. Appeal is dismissed with costs.



Mugeta

I.C. Mugeta

Judge

22/4/2021

Court: Judgment delivered in presence of the respondent and in absence of the appellant.

Sgd: A.J. Kirekiano

Deputy Registrar

22/4/2021