

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC CIVIL APPLICATION NO. 10 OF 2021

(Emanating from Matrimonial Appeal No. 12/2020 at Bukombe District Court and Matrimonial Cause No. 40 of Runzewe Primary Court)

SAIMON KOSANI APPLICANT

VERSUS

RUSIA JOHN RESPONDENT

RULING

20th & 29th April, 2021

RUMANYIKA, J.:

With respect to judgment and decree it appears dated 10/12/2020 of Bukombe district court, the application for extension of time within which Simon Kosani (the applicant) to lodge an appeal it is brought under Section 25(1) (b) of the Magistrate's Court Act Cap 11 R.E. 2019 supported by his affidavit whose contents essentially, the applicant adopted on 20/04/2021 during audio teleconferencing. Like the applicant, Rusia John (the respondent) appeared in person. For avoidance of doubts I heard them through Mobile numbers 0767474975 and 0745056223 respectively.

Unusually briefly, the applicant submitted; **(a)** that as immediately after delivery of the judgment his child fell sick, he was therefore forced to, and for so long he remained back attending the boy until when the latter was now ok hence the delay **(b)** that actually the respondent had not been his wife. That is all.

It appears having had adopted contents of the counter affidavit, in reply the respondent submitted that the applicant only played delaying tactics just like the latter disowned her being his wife and he had no sick child to attend either much as by the time she was single but a wealthy widow, for that reason the applicant was attracted and they married. That is it.

The bottom line and issue is whether the applicant has assigned sufficient grounds for extension of time. The answer is no for **4** main reasons; **(a)** for a month or even longer period the applicant may have had his child fallen sick and he had to remain back in the ward, if at all at Uyovu Health Center attending the boy, according to the medical chit until 08/01/2021 latest yes, but it being in the supporting affidavit or even during his oral submissions the applicant did not tell the court if, in his

family he was the only person available and responsibly that long to attend the boy.

(b) Even where the sick boy became ok on 08/01/2021, contrary to the long established legal principle, without accounting for each day of the delay he lodged the instant application say eleven (11) days later i.e. on 19/01/2021 suffice the points to dispose of the matter.

(c) without running risks of jumping into the intended 2nd appeal prematurely, looking at the copy of the appended three grounds of appeal, as opposed to points of law they all purely revolve around points of fact which ordinarily end of the day were bound to fail because it is settled law that very seldom than not, 2nd appeal courts reversed concurrent factual findings of the two courts bellow.

(d) Be it accidentally or by design, the applicant appended all the copies to the application except the impugned judgment/decreed. It was therefore next to impossible for me really to ascertain the extent of his delay.

In the upshot, the devoid of merits application is dismissed with costs. It is so ordered.

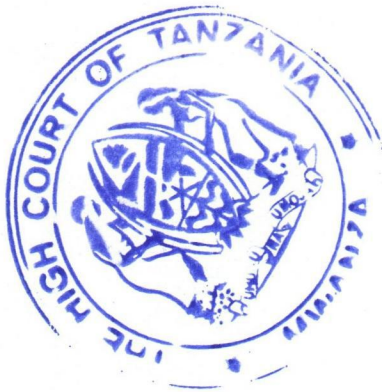
Right of appeal explained.


S. M. RUMANYIKA

JUDGE

26/04/2021

The ruling delivered under my hand and seal of the court this
29/04/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

29/04/2021