

IN THE UNITED REPUBLIC OF TANZANIA

THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION No. 168 OF 2020

*(Arising from Matrimonial Cause No. 12 of 2018 of District Court of Kinondoni at
Kinondoni)*

ADEN MWAFULA.....APPLICANT

Versus

RACHEL WILLIAM IFANDA.....RESPONDENT

RULING

2nd October, – 24th November 2020 - 2nd March, 2021

J. A. DE - MELLO J;

An '**Extension of Time** within which the Applicant may file an **Appeal Out of Time**' against the decision of **Hon. I. Kasailo, RM** vide **Matrimonial Cause No. 12 of 2018** of **District Court of Kinondoni** at **Kinondoni** is all what attracts a ruling from this Court. The Court is moved under **Order XLIII Rule 2, section 95** of **Civil Procedure Code, R.E 2002** and, **section 14 (1) (2)** of **Law of Limitation Act Cap. 89, R.E 2002**. The Applicants own Affidavit is in support of the Application, the said **Aden Mwafula**. Written submissions were preferred by parties, which the Court duly granted on the **1st of September 2020** that attracted the following pattern. By the Applicant, on or before the **14th September, 2020**, reply by the Respondent on **28th September, 2020** and, rejoinder on the **2nd October, 2020**. I am delighted to observe compliance by both, in absence of rejoinder, which is usually optional.

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The Affidavit to be adopted, formed part of the contents of his submissions that, the Applicant and, the Respondents were parties in **Matrimonial Cause No. 12 of 2018**, whose judgment delivered on the **3rd October, 2018** but surprisingly, dated **21st October, 2018**, not accompanied with decree and, availed to the Applicant on the **29th November, 2018**. Further that, the said judgment was tainted with arithmetical and, clerical mistakes, to mention a few is, such as the citing of the case number **Matrimonial Cause No.12 of 2018** as **Matrimonial Cause No. 12 of 2017**, birth year of **Martin Aden Mwafula**, the Appellant, reflecting **30th March, 3013** instead of **30th March, 2013** as clearly seen on the first page of the judgment and, referred to **annexture MS-1**. On **paragraph 5** of the Affidavit, the Applicant claimed to be sick for sometimes but, he made follow ups to get the proceedings and, judgment for Appeal and, attached medical reports as **annexed as MS-2**. He then wrote his first letter seeking for the copies of Judgment on **3rd October, 2018** of which was received by the Court on **4th October, 2018** herein **annexed as MS-3**. The Applicant prayed to be given a corrected version of judgment, but yet again a second letter on **4th December, 2019** annexed as **annexture MS-4** which ultimately resulted in receipt of a corrected version together with the Decree on **25th March, 2020** as shown in **paragraph 7** of the Affidavit and, annexed as **MS-5**. It is his contention further that the follow ups were more than enough to make ensure justice is reached without unnecessary delays, by cited the case of **Hanspaul Automechs Limited vs. RSA Limited, Civil Application No. 126/02 of 2018, Court of Appeal of Tanzania at Arusha**. He further stated that, the Applicant has neither in any way acted negligent nor caused delay on his side as he drew the Court to the case

of **Tanzania China Friendship Textile Co. Ltd vs. Charles Kabwe and Others, Civil Revision No. 52 of 2008, Court of Appeal of Tanzania (unreported)** which was also referred by **Hanspaul's** case (supra) which held that;

"The applicant should not be condemned for the delay by the court to supply him..."

It is the Applicant's conclusive submissions that, owing to the above irregularities, his prayers be granted to file the Appeal.

Opposing the Application, the Respondent quoted **section 14 (1)** of the **Law of Limitation Act, Cap. 89, R.E 2019**, which stipulates the powers to extend time, to be purely discretionary by Courts. It is sufficient reasons that form basis for the said exercise upon which if satisfied, Courts will consider and, grant. The case of **Ehangir Aziz Abdulrasul vs. Balozi Ibrahim Abubakar and Bibi Sophia Ibrahim, Civil Application No. 79 of 2016**, that, the Applicant made reference to, in support of his contention. It is therefore the Respondents prays therefore for this Court to exercise its discretion judiciously to determine whether the reasons for delay as stated by the Applicant are sufficient.

However and, **'Suo Motu'**, the Applicant made this Application under **Order XLIII Rule 2** and, **section 95 of Civil Procedure Code, R.E 2002** and **section 14 (1), (2) of Law of Limitation Act, Cap. 89, R.E 2002**. With due respect to the citation, I remind the Applicant that, in accordance with the **Law Revision Act, Cap. 4** under **Government Notice No. 140** which was published on **28th February, 2020**, revising the laws **2019** and not, **2002**, as cited. This said, I will proceed with the contentious matter before the Court by adopting the principles that, the case of **Lyamuya Construction Company Ltd vs. Board of**

Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported) had as hereunder;

(a) The applicant must account for all the period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."

In the case at hand, the Applicant stated that, the judgment was entered **03rd October, 2018**, but surprisingly, it was dated **21st October, 2018** and, the copy of the judgment without decree was availed to the Applicant on **29th November, 2018**. It is further contention that, the said judgment was tainted with arithmetical and, clerical mistakes as highlighted above. Without flicker of doubt and, true there was a clerical mistakes as the case cited. was **No. 12 of 2017**, but also the Applicants name and date of birth were not captured correctly. It is even evident that, **Annexture MS-3** a letter written on **3rd October, 2018** praying for the copies of judgment and, proceedings which is a very day the of the issuance of the judgment. Coupled with errors, the Respondent wrote a second letter on **4th December, 2019** annexed as **annexture MS-4** for a correct version which until **25th March 2020**, was availed. Amidst illness, the Applicant made several follow ups to secure copies of the proceedings and, the

judgment, attaching his medical reports as **annexture MS-2**. What all this translates to, is the Applicant's diligence in pursuit of his rights as opposed to inordinate delays.

Section 14 (1) of the **Law of Limitation Act, Cap. 89, R.E 2019** provides that;

"Notwithstanding the provisions of this Act, the Court may, for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application".

Similar observation is observed by the Respondent that section allows Courts to extend time upon sufficient cause or reasonable cause are adduced, of which his Court finds merits.

Section 19(2) of the **Law of Limitation**(supra) states that;

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded".

This being a matrimonial matter, **section 80 (2)** of the **Law of Marriage Act Cap. 29, R.E 2019** provides for the limitation of Appeals, stating that;

“An Appeal to the High Court shall be filed in the magistrate’s court within forty-five days of the decision or order against which the appeal is brought”.

The two **section 19 (2)** of the **Law of Limitation** (supra) and, **89 (2)** of the **Law of Marriage Act** (supra) read together, with exhibits availed, confirms the Applicant to still be within time, computing from time a corrected copy of the judgment and decree was received. The errors as observed were fatal as they went to the root of case, which if left unattended would render the suit incompetent.

Having said so, I hereby grant the Applicant his prayers in accordance with the law.

It is so ordered.




J. A. DE- MELLO

JUDGE

2nd March, 2021