

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)  
AT MTWARA**

**MISC. CIVIL APPLICATION NO. 8 OF 2020**

*(Arising from Matrimonial Appeal No. 4 of 2019 of District Court of Newala  
originating from Newala Primary Court in Matrimonial  
Cause No. 21 of 2019)*

**FAKIHI SAID MNINDEKA .....APPLICANT**

**VERSUS**

**MAIMUNA MFAUME KAHAMBA.....RESPONDENT**

**RULING**

*Hearing date on: 22/4/2021*

*Ruling date on: 15/6/2021*

**NGWEMBE. J;**

The applicant Fakihi Saidi Mningdeka found his way to this court applying for extension of time to lodge an appeal out of time. The complaint of the applicant traces back from the judgment of Newala Primary Court, whereby the respondent petitioned for divorce against the applicant. The applicant was dissatisfied with the decision of the trial court, hence appealed to the District Court of Newala. The said appeal was delivered on 31<sup>st</sup> October, 2019 in favour of the respondent. Hence intended to appeal to this court. But, before actualizing his intention, unfortunate,



he was caught in the web of time limitation. Thus, this application for extension of time.

On the hearing of this application, the applicant, (Fakihi Saidi Mnindeka) managed to procure legal representation from Anisa Mziray assisted by Pricila Mapinda learned advocates, while the respondent appeared in person. As such, they consented to dispose of this application by way of written submissions, which both parties adhered with the court schedule.

Briefly, the applicant submitted that among the reasons for delay to appeal within time was illness. That due to sickness from hypertension which arose immediately after delivery of the impugned judgment, the fact which is proved by the attachment of medical certificate in his affidavit.

Maintained that, due to sickness, the applicant was required to attend clinics at Likombe Hospital from 26<sup>th</sup> November, 2019 to date , as such, he failed to file an appeal timely as prescribed under section 25 (1) (b) of the Magistrates Court Act. He supported this point by citing a case of **Thadeus J. Lyamuya Vs. Monica Jonathan Leringa, Criminal Application No. 137 of 2017** (unreported) HCT at Arusha and the case of **Peter Msingija Vs. The R, Miscellaneous Criminal Application No. 22 of 2020** (unreported) HCT at Mwanza.

Finally submitted that, due to sickness, the applicant was prevented to take timeous an action to appeal and or look for a legal assistance because of his unhealthy condition, thus, forced him to attend



medication from Likombe Hospital. Thus, illness constitutes a good cause for delay to file an appeal within time.

Unfortunate to the respondent, either by design or default, she did not comply with the court order to file her written submission. It is known legal principle of law that hearing of a case may be conducted orally by advancing legal grounds, or producing witnesses to testify in court, or by filing written submissions as per court order. Failure to appear on the hearing date or failure to file written submission as per the court order is fatal. I may borrow a leaf from the judgement of **Hidaya Zuberi Vs. Bogwe Mbwana PC. Civil Appeal No. 98 of 2003** the court held:-

*"The practice of filing submission is tantamount to a hearing and therefore, failure to file submission has been likened to nonappearance or want of prosecution...."*

It goes therefore, that the respondent's failure to file written submission on a date agreed by both parties as scheduled by this court, amounts to consent to the application for extension of time. With uncertain terms, the respondent lost her opportunity to be heard as was pleaded in her counter affidavit. As such, the application is unopposed.

Moreover, extension of time is within the court's discretionary powers, which always is exercised judicially, meaning upon closure of sufficient reasons for delay. The applicant has advanced the reason of sickness which prohibited him from appealing against the impugned decision timeously. Always sickness if confirmed, amounts to a good cause for extension of time. Notably, sickness is an unexpected condition beyond human control. To fortify this argument of sickness, the applicant



attached sick sheet from Likombe Hospital in his affidavit, indicating that he attended clinic at Likombe Hospital. Thus justifying his genuine delay to appeal timeously.

Having so said, and for the reasons so stated, I proceed to exercise my discretionary powers to grant the prayer for extension of time. Consequently, the applicant is granted extension of time to file his appeal out of time within 14 days from the date of this ruling.

**I accordingly order.**

Dated at Mtwara this 15<sup>th</sup> day of June, 2021.



**P.J. NGWEMBE**

**JUDGE**

**15/6/2021**



**Court:** This ruling is delivered in Chambers in the presence of Tecla Kimati, Advocate for the applicant, and in the absence of the respondent.

**Right to appeal to the Court of Appeal explained.**



**P.J. NGWEMBE**

**JUDGE**

**15/6/2021**

