

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

MISC. CIVIL APPLICATION NO. 6 OF 2020

*(Arising from Matrimonial Appeal No. 14 of 2019, originating from
Tandahimba Urban Primary Court in Matrimonial No. 46 of 2019)*

SAIDI MFAUME MUNYEMU..... APPLICANT

VERSUS

SOFIA MOHAMED CHIHAKO RESPONDENT

RULING

Hearing date on: 8/6/2021

Ruling date on: 15/6/2021

NGWEMBE, J:

Said Mfaume Munyemu and Sofia Mohamed Chihako were husband and wife, but at the end of their marriage they divorced. In their divorce, the applicant was dissatisfied, hence appealed to the District Court of Tandahimba challenging against that divorce. Unfortunate to the applicant, the 1st appellate court upheld the decision of the trial court. Again, being dissatisfied with such decision, the appellant found his way to this court. Unfortunate his intention to appeal to this court was caught under the web of time limitation. The fire to appeal against the decision of lower court

continued to burn in his heart and mind, fortunate at the end, found his way to apply for extension of time to actualize his intention to seek justice in this court exercising appellate jurisdiction.

Accordingly, on 26th March, 2020, he managed to institute an application for extension of time in this court, attached with an affidavit disclosing some reasons for delay. In turn when the respondent was served with the chamber summons and affidavit, she resisted the application by filing an affidavit in opposition. Hence, on the date of hearing each party did not procure legal representation, rather they appeared in persons.

Briefly, the applicant argued that, he is intending to challenge the decree of the trial court, which was supported by the 1st appellate court to the extent that the grounds which led into divorce was unfounded and he still love his wife and would like to maintain his marriage with the respondent.

When the respondent was granted time to respond therein, she resisted the application for extension of time based in her counter affidavit. Above all, she added that she is no longer lover him and is not ready to live together with the applicant.


In consideration of this application I wish to refer to the cited provisions which moved this court to exercise its discretionary powers to grant extension of time. The applicant moved this court under section 25 (1) (b) of Magistrate Court Act Cap 11 R. E. 2002, and any other enabling provisions of law. For clarity section 25 (1) (b) is quoted hereunder:-



Section 25 (1) (b) *"In any other proceedings, any party, if aggrieved by the decision or order of the District Court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; provided that the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired"*

This section is appropriate for cases originating from Primary Court. However, the applicant ought to cite section 14 of the Law of Limitation Act. Failure to cite the Law of Limitation Act may be fatal, but in this application, the applicant has added *"any other enabling provision of law"*. Bearing in mind, the applicant is a lay person and both are not represented, therefore to be strict on this point alone, may cause injustice and outcry in the society. Accordingly, I invoke the doctrine of Overriding Objective to proceed with the merits of this application.

From the outset, extension of time is discretionary powers of this court. However, the duty of the applicant is to disclose sufficient reasons for delay. The best reason is that the applicant was not the source of delay. Moreover, the court in exercising its discretionary powers, must take into consideration all relevant factors, including the need to arrive to a final and conclusive decision of the dispute by the superior court. The judges of the East African Court of Appeal in the case of **Mbogo Vs. Shah [1968] EA 93**, arrived into a similar conclusion. The purpose of granting extension of time, at most is to arrive into a final settlement of the dispute.

In respect to this application, the applicant's affidavit disclosed some reasons for delay in paragraphs 3 and 4, that is, delay of the 1st appellate 

court to furnish him a copy of the judgement, and sickness. Those two reasons prevented him to appeal within the prescribed time. To justify his assertion, the applicant attached in his affidavit a copy of sick sheet of 1st January, and 13th March, 2020. To the best, these are good reasons to justify extension of time. In the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010**, the Court provided a living guidance that discretionary powers of the court on extension of time is exercised according to the rules of reason and justice as opposed to private opinion. It is worth to quoting it in this ruling:-

"As matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial, and so it must be exercised according to the rules of reason and justice and not to private opinion or arbitrarily"

Notably, the right to appeal is natural a right to an aggrieved party, which is preserved in the Constitution of the United Republic of Tanzania. However, such right is subject to compliance to the time limitation, which may hinder actualization of such right. Moreover, when the appellant is caught in the web of time limitation, but had a comprehensive reason for such delay, always the court will open doors for extending reasonable time to allow the appellant to lodge his appeal out of time. Such door is opened simply because the legislature and the court always intends to find the dispute is finally and conclusively decided.



In this application, the applicant was hindered to appeal within time due to sickness and delay of the 1st appellate court to furnish him with a copy of the judgement. Undoubtedly, judgement and proceedings are fundamental documents for preparation of reasonable grounds of appeal. Therefore, I would agree with the applicant that he could not have appealed timeously in the absence of impugned judgement. Also he was sick which prohibited him to exercise his right of appeal within time.

In totality, I hereby grant the prayer, and extend time of fourteen (14) days from the date of this ruling to file the intended appeal. In the circumstances of this application, it is just to order each party to bear his/her costs.

I accordingly order.

Dated at Mtwara in chambers this 15th day of June, 2021


P.J. NGWEMBE
JUDGE
15/6/2021



Court: Ruling delivered at Mtwara on this 15th day of June, 2021 in the presence of both parties.

Right to appeal to the Court of Appeal explained.


P.J. NGWEMBE
JUDGE
15/6/2021

