

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA

MISC. CIVIL APPLICATION NO. 45 OF 2020

*(C/f Civil Appeal No. 31 of 2018 in the District Court of Arusha at Arusha, originating from
Matrimonial Cause No. 12 of 2016 in Arusha Urban Primary Court)*

PROJESTUS PROTASAPPLICANT

VERSUS

NEEMA JUSTINE MSENEMBORESPONDENT

RULING

01/06/2021 & 20/07/2021

GWAE, J

This application is brought up by the provisions of section 25 (1) (b) of the Magistrate Courts' Act, cap 11 R. E 2019. The applicant, **Projestus Protas** in this application is seeking an order extending time so that he can be able to file his appeal to this court out of time. Hence, issue before me is whether the applicant has given sufficient cause for his delay to file the intended appeal within statutory period forty-five (**45**) days and not thirty (**30**) days as wrongly perceived by the applicant as the matter is matrimonial one.

The application is supported by a sworn affidavit of the applicant whose reasons for the delay are stated therein and strongly opposed by the respondent, **Neema Justine Msenemo** through her counter affidavit.

Looking at the applicant's affidavit, the applicant briefly avers that, his reasons for his delay was, **firstly**, his request for being availed with copies of judgment and decree dated 23rd July 2019 on the 26th July 2019 while but he was supplied with the same on the 19th August 2019 and **secondly**, that, he felt sick immediately after being supplied with certified copies of judgment of the District Court of Arusha exercising its appellate jurisdiction vide Civil Appeal No. 31 of 2018 and that he had been going medication at Oltrumet Hospital. In support of his assertion, he attached a letter from doctor in-charge of the said Government Hospital.

Opposing the application, the respondent through his counter affidavit seriously disputed the applicant's averments as to the reasons for delay adding that the matter is now at execution stage through an application duly filed by the applicant on the 17th February 2020.

This application was disposed of by way of written submission, the applicant's counsel (Ismail Nimrod) reiterated what is contained in the affidavit however he added that the right of appeal is constitutional right as envisaged under article 16 of the URTC, 1977 as well as emphasis by this court (Ngwembe, J) sitting at Mtwara registry vide Misc. Civil Appeal No. 1 of 2019 (unreported). The applicant further argued that, the intended appeal has great chances of

success as extent of contribution of each party in the acquisition of the matrimonial property was not considered by the 1st appellate court.

In his submission, Miss Happiness Mfinanga, the learned counsel for the respondent argued that, the delay of about one-year denoting that the applicant could be sick for all that period. She further challenged the letter from Medical Officer In-charge by stating that the same is not specific of the dates the applicant, if so, attended medication and more so, there is no any medical receipt to that effect. Ms. Happiness also argued that the applicant has failed to account the delay of each day. She referred this court to the case of **Bushiri Hassan v. Latifa Luki**, Civil Application No. 3 of 2007 where delay even a single day was said to be accounted for otherwise there would be no need of having rules prescribing period within which certain steps have to be taken.

Having examined the parties' affidavits and as well as their respective written submissions, I am of the considered view that, though sickness can amount to a sufficient cause capable of justifying a court of law to enlarge time for filing an appeal or an application out of prescribed period but the same ought not only to be proved but also it must reflect all days of delay.

If the applicant was discharged and advised to do light duties on days of October 2019 while this application was filed on 1st day of June 2020. Can it be said that filing an appeal constitutes heavy duty, the answer is negative.

by the court (see also a case of **Abdallah Mkumba v. Mohammed Lilame** (2001) TLR 326.

I have also considered the complained illegality of the decision namely; that the District Court did not consider each party's extent of contribution to the acquisition of the matrimonial assets and come up with a finding that the issue of illegality is too remote as the appellate magistrate endeavored to justify as why the respondent should get shares from the house by assessing her contribution to the acquisition of the property. The alleged illegality is not so apparent; thus, this reason for the sought extension is hereby rejected.

Taking into account that, the applicant has failed to account each day of delay and considering the fact that certified copies of decree and judgment are not the requisite in filing an appeal for a matter that originates from primary court, this application for enlargement of time is consequently dismissed for want of sufficient cause. Given the nature of the relationship that exists between the parties, I shall not make any order as to r costs of this application

It is ordered.




M.R. GWAE
JUDGE
20/07/2021