

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS CIVIL APPLICATION NO.243 of 2020

GODFREY JOSEPH MARWA..... APPLICANT

VERSUS

JOSEPHINE MWITA CHORWA.....RESPONDENT

(From the decision of this Court)

(Kakolaki, J)

Dated 24th April 2020

in

Civil Appeal No.200 of 2019

RULING

14th July & 9th August 2021

Rwizile, J.

The applicant has filed this application applying for extension of time within which to file an application for leave to appeal to the Court of Appeal out of prescribed time. The application is preferred under the provisions of Section11(1) of the Appellate Jurisdiction Act and Rule 47 of the Court of Appeal Rules. It is as well, supported by an affidavit of the applicant. Stating grounds through which this application is founded.

It has been in record that the applicant and the respondent have been locked in a matrimonial dispute since 2019 before Ilala District Court. The

decision of the trial court did not satisfy the respondent who appealed to this court. The appeal was heard and a decision of this court partly confirmed the substantive party of the trial court decision. The applicant therefore was not satisfied by the decision. He was therefore as a matter of law and procedure required to seek leave to appeal to the court of appeal. He did not do so in time, hence this application.

Before this court, parties are not represented. They opted to have this application argued by written submission. The applicant when supporting his application, he argued that, this delay was due to late supply of the judgement, decree and proceedings. He said, the decision being made on 24th April, he was supplied with the judgement alone on 12th May 2020. This time according to him was already time barred. Worse still, he submitted, the rest of the documents were supplied later thereafter. In his view, since Rule 49(3) of CAR requires before applying for leave at least a copy of the decision or order appealed must be attached. He also amplified this argument by the case of **Benedict Mumello vs BOT**, Civil Appeal No. 12 of 2002. The applicant therefore asked this court to grant the application because delay was due to good reason as held in the case of **Mrs. Kamaz Abdullah MD Kernal vs the Registrar of Buildings and Miss Hawa Bayona** [1988] TLR 199.

On party of the respondent, it was argued that the respondent it was his view that the applicant did not have good reasons for delay as stated in the cases of **Ngao Godwin Losero and Julius Mwarabu**, Civil Application No.10 of 2015 and the case of **Lyamuya Construction Co. Ltd vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, which laid down principles to follow as follows;

- i. The delay should not be inordinate;*
- ii. The Applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- iii. If the Court feels that there are 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*

It was submitted further that there is no proof of delay caused by late supply of the said documents as he alleged. On the second instance, the respondent was of the view that since the applicant was required to account for each day of delay, he ought to account for day from 12th May 2020 when he received the judgement and when he filed this application. In this she was supported by the decision of the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, where it was held that delay even for a single day must be counted. She asked this court therefore to dismiss this application with costs.

On rejoinder, the applicant had nothing material to added save reiterating what was submitted in chief.

Upon going through the submissions by the parties, it has to be noted that, the reasons mainly stated by the applicant for delay is court's late supply of the important documents. According to paragraph 4 of the affidavit in support of the application it is the judgement that was supplied on 12th May and time had by then elapsed. In support of this, he filed letters, one as annexure A2 applying for the same.

This letter is dated 27th April and was served on the court on 29th April, another letter annexure A3 dated 11th May that came to court on the same day also is to that effect. I have no doubt that these letters were not communicated in the cause of normal business. There is also no reason to suppose that the applicant had been supplied with the same documents but still wrote to court to ask for the same. It is clear as well that the applicant filed a notice of appeal on 29th April as it shown. Further, observation on the records is apparent that this application was filed on 15th May which as it shown, it took him two days upon receiving the copy of judgement.

From the record and submission of the parties, I have the view that the applicant did not sit on his right. There are reasons good enough to support his application.

As submitted by the respondent, it is trite that, granting or refusing extension of time is an absolute discretion of the court. Though, for the same to be granted, one must show sufficient cause and account for each day of delay. The same is stated in the case of **Benedict Mumello (supra)** where the Court of Appeal of Tanzania held inter alia that:

"...It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse, extension of time may only be granted where it has sufficiently established that the delay was with sufficient cause..."

I am also fortified by the case of **Wambura N. J Waryuba vs The Principal Secretary Ministry for Finance and Another**, Civil Application No.320/01 of 2020, when the Court of Appeal held that;

"...It is essential to reiterate here that the Court's power for extending time under Rule 10 of the Rules is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown.

The question to be determined is whether the applicant has shown sufficient cause for delay. The same is answered by the principle stated in the case of **Lyamuya Construction Company Limited (supra)** and see also the case of **Wambura N. J Waryuba (supra)** at page 7 as it has been shown before. The applicant did not take too much time to apply for the same upon being supplied with the judgement. Had that been done before, I think, he could have done so in time. This application is therefore granted with no order as to costs. The applicant is given 14 days from the date of this ruling to file the desired pleadings.

**AK. Rwizile
Judge
09.08. 2021**



Recoverable Signature

X

Signed by: A.K.RWIZILE