

**IN THE COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 84 OF 2021

(From Matrimonial Appeal No. 33 of 2020 at the District Court of Kinondoni before Hon. H.M. HUDI Original Matrimonial Cause No 38 of 2019 of Kinondoni Primary Court)

ALEKUNDA JOHN URIO APPLICANT

VERSUS

BERNAD H. KONGOLA RESPONDENT

RULING

13/10/2021 & 13/10/2021

I. C. MUGETA, J.

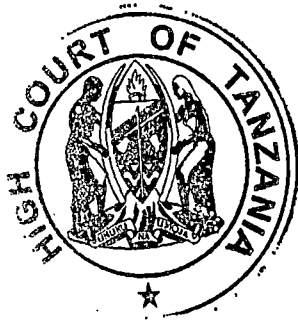
The parties were husband and wife. The applicant is applying for order extending time to enable her appeal the decision of the District Court. The main cause of the delay per her affidavit is sickness. Hospital attendance report is attached as annexure "B" to the affidavit. The respondent opposes the application mainly on ground that the applicant, if she suffered any sickness, was an out patient who continued with her daily routines.

After hearing the parties' counsel submissions on 13/10/2021, I instantly ruled that the application is granted promising to write reasons for the decision later on the day. I further directed the parties to collect the ruling and the drawn order on 18/10/2021 at 14.00 hours. Here now are the reasons for my decision.

It is now settled that time to appeal can be extended on showing a sufficient cause for the delay and accounting for each day of the delay. The impugned judgment was delivered on 3/11/2020. This application was filed 26/2/2021.

Under section 80(2) of the Law of Marriage Act [Cap. 29 R.E. 2019] the appeal was to be filed within 45 days of the decision. The 45 days expired on 18/12/2021, therefore, the appeal was delayed for 79 days. Annexure "B" shows that the applicant started attending treatment on 16/12/2020 up to 11/1/2021. The days from 11/1/2021 to 26/2/2021 are unexplained as to what the applicant was doing. In paragraph 7 of the affidavit the applicant avers that by the time her health stabilized, time to appeal had elapsed. The affidavit is deadly silent on when her health stabilized. In the counter affidavit, the respondent has countered the allegation that her health stabilized after time to appeal has expired as vague and presumptive. I agree with the respondent. However, sickness, if proved, is a sufficient cause for granting orders extending time to appeal. The argument by the respondent that the applicant was not hospitalized is untenable because not all out patients are able to perform their duties well. I have no reason to doubt the averment that the applicant was sick enough to fail to pursue the appeal. I consider her failure to explain in the affidavit as to when her health stabilized as a normal human error which does not negate the fact that she was sick.

It is on the foregoing account I granted the application. The applicant to file the intended appeal within 14 days from 13/10/2021.



Mugeta
I. C. Mugeta

Judge

13/10/2021

Court:

Order granting the application was made today before Alphonse Kitimi advocate for the applicant and Pendo Charles, advocate for the respondent.

Sgd: I. C. Mugeta

Judge

13/10/2021