

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 533 OF 2020

(Arising from Misc. Civil Application No. 641 of 2016 of this court)

SAMARIA MANFRED MACHANGE-----APPLICANT

VERSUS

RABAN MSAMILA AMBAKISYE-----RESPONDENT

RULING

5/10/2021 & 12/10/2021

I.C MUGETA, J

This is an application for leave to appeal to the Court of Appeal made under section 5 (1) (c) of the Appellate Jurisdiction Act and Rule 45 (a) of Tanzania Court of Appeal Rules.

Briefly, the facts of the case are that the applicant was aggrieved by the decision of the Temeke District Court which dissolved the parties' marriage and ordered, among other orders, equal division of the matrimonial assets. It is alleged by the applicant that due to failure to timely supply her the requisite documents for appeal proposes, she could not file an appeal in time. Consequently, she preferred an application for extension of time to appeal out of time. The application was dismissed by this court,

(Mlyambina, J) on 13/11/2018. She is now seeking leave to appeal to the Court of Appeal against the denial of extension of time to appeal out of time. In his decision, my brother (Mlyambina, J) held that the applicant had failed to account for each day of the delay. My brother also found unproved the allegation that one Jeremiah Logita who represented the respondent at the trial was unqualified advocate. It was further held by my brother that the allegation that the proceedings at the trial court was illegal for being conducted by unqualified advocate by itself was not sufficient to grant the prayers for extension of time because illegality allegation is subject to diligence and the applicant did not act diligently.

The applicant is now intending to impugn the decision of this court on the following grounds: -

- (i) Whether supply of a copy of decree by the trial court out of prescribed time of appeal constitute sufficient reason for the extension of time to the applicant to file appeal.
- (ii) What is the legality of proceedings conducted by unqualified person who represented a client in court impersonating himself as an advocate.
- (iii) Whether illegality constitutes sufficient reason for extension of time.

The parties filed written submissions to argue the application. The respondent in reply to the submission of the applicant has raised an objection that the application is time barred. While this is a very unusual way of raising objection, I shall consider it because it is about time limitation. The respondent alleges that the applicant was given 10 days to file this application from the date this court (Masabo, J) granted leave to file this application. The ruling granting leave is dated 4/9/2020 while this application was filed on 16/10/2020.

Indeed, this is more than 10 days within which it was ordered the application to be filed. However, the ruling by my sister Masabo, J attached to the application does not show the date when it was delivered. The ruling ends like thus: -

"DATED at DAR ES SALAAM this 4th day of September 2020".

The respondent counsel has replied on this issue that the ruling was delivered on 29/9/2020 and this application was filed electronically on 9/10/2020 well within the 10 days, therefore, the objection is misconceived.

I agree with counsel for the respondent on the date of ruling delivery and the filing date. I took trouble to recall the original file and confirmed that

the ruling was delivered on the date stated by the counsel for the respondent. It is likely that the date on the ruling is its composition date. Consequently, I hold that the allegation that the ruling was delivered on 4/9/2020 is erroneous. For avoiding unnecessary objection like it should be the practice that he who wishes to prove a date when a judgment or ruling was delivered for purposes of establishing the limitation period must attach the judgment or ruling which shows the date of its delivery. The objection is overruled.

Regarding the merits of the application leave, it is settled that leave to appeal to the Court of Appeal can be granted when the applicant proves that the intended appeal raises a point of general importance worth the attention of the highest court in the land. This principle was stated in **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 133/2004, Court of Appeal (unreported). In this case issues raised are three: Firstly, whether delayed supply of decree by the trial court constitutes sufficient reason for extension of time. Secondly, whether proceedings conducted by unqualified person are illegal and thirdly, whether illegality constitutes sufficient reasons to grant a prayer for extension of time.

It is my view that the above three grounds raise points of general importance worth consideration of the Court of Appeal. On that account. I hereby allow the application




I. C. Mugeta

Judge

12/10/2021

COURT: Judgment delivered in chambers in the presence of respondent who appeared in person and in the absence of the applicant.

Sgd: I. C MUGETA

Judge