

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**MISCELLANEOUS CIVIL APPLICATION NO. 01 OF 2021**

(Arising from the decision of the District Court of Kilosa at Kilosa in  
Civil Revision No. 02 of 2021)

**HABIBA SAID LYENGITE ..... APPLICANT**

**VERSUS**

**RAMADHANI SAID MSHAMU ..... RESPONDENT**

**RULING**

Date of Last Order: 12/11/2021 &  
Date of Ruling: 24/11/2021

**S.M. KALUNDE, J.:**

The present application has a somewhat protracted history. It goes as follows: in 2012 the applicant and respondent contracted an Islamic marriage in which they were blessed with two issues. Subsequently, in 2017 before the Ruaha Primary Court, the applicant, HABIBA SAID LYENGITE, petitioned for divorce, division of matrimonial property, custody, and maintenance of children. The trial court determined the matter in

favour of the applicant by granting the divorce, ordering distribution of matrimonial property and custody of children.

The respondent was dissatisfied with the decision of the trial court hence he preferred an appeal before the District Court of Kilosa at Kilosa. Upon hearing all the parties, the appellate court ordered the case to be tried afresh. Subsequently, the applicant filed an application before the District Court of Kilosa for orders that the case be tried before the District Court. The application was granted. Following the grant of the application, a fresh application was filed before the District Court. However, it was dismissed for want of prosecution. That seemed to end the applicants' efforts for divorce.

In early 2019, the respondent filed for divorce through Matrimonial Cause No. 01 of 2019 before the District Court. The application was struck out for want of a valid certificate of reconciliation from the marriage conciliation board. Undeterred, the respondent filed Matrimonial Cause No. 15 of 2020 before the Ruaha Primary Court. The matter did go well with the applicant.

she filed Civil Revision No. 02 of 2021 before the District Court of Kilosa. Upon hearing both parties the District Court dismissed the application.

The applicant now wishes to appeal against the decision of the District Court of Kilosa at Kilosa in Civil Revision No. 02 of 2021. She is out of time, hence the present application in which she is seeking for extension of time to lodge an appeal out of time. The application is preferred under **section 25 (1) (b)** of **the Magistrates Courts Act, Cap. 11 R.E. 2019** ("the MCA") and supported by an affidavit dully deposed by HABIBA SAID LYENGITE, the applicant. The application has been objected through a counter affidavit deponed by RAMADHANI SAID MSHAMU, the respondent.

On 06<sup>th</sup> October, 2021 when the matter was placed before me for hearing **Mr. Sauli Sikalumba** learned advocate appeared for the applicant. The respondent was being represented by learned counsel **Mr. Arnold Katunzi**. Both counsels made brief submissions for and against the application. I will not reproduce



the substance of each party submissions here, however, it suffices to state that I have taken due consideration of the relevant submissions as may be examined in due course.

Having read the pleadings and records filed before the Court and after considering the submissions made by the parties, the question for determination by this Court is whether the application is merited. To resolve the above question, I propose to start with the relevant principles of law regulates the applications of the present nature. There is no dispute that the present application was filed under section 25(1)(b) of the MCA. The respective section provides as follows:

*"25. - (1) Save as hereinafter provided-*

*(b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and **the High Court may extend the time for filing an appeal** either before or after such*

*period of thirty days has expired.” [Emphasis mine]*

In the words of section 25(1)(b) cited above, this Court has discretion to extend time within which an applicant can lodge an appeal out of the prescribed time. However, it is trite that an extension may only be granted where an applicant has demonstrated that he/she was precluded from filing the appeal on time by some **"sufficient or good cause"** has been given. The difficult which often arises is what amounts to **"sufficient or good cause"**. Guidance has been provided through judicial pronouncements on factors to be considered when ascertaining whether there is sufficient cause (See **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported)). These factors include:

- 1 The applicant must account for all the period of delay;
- 2 The delay should not be inordinate;
- 3 The applicant must show diligence, and not apathy, negligence, or sloppiness in the

prosecution of the action that he intends to take; and

- 4 If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Guided by the above factors I will subject the facts of the present case to scrutiny and ascertain whether the applicant has been able to demonstrate good cause for this Court to exercise its discretion in granting the orders sought.

Going by the pleadings and submissions by the parties, there is no dispute that the decision of the District Court of Kilosa in Civil Revision No. 02 of 2021 was delivered on 12<sup>th</sup> July, 2021. It is also on record that the decision was certified as ready for collection on 29<sup>th</sup> July, 2021. This was also the date the applicant collected the judgment at the District Court. In terms of section 25(1)(b) of the MCA, the clock of time limitation started to kick on 29<sup>th</sup> July, 2021 where the applicant had thirty (30) within which to lodge her appeal. The limitation period expired on 28<sup>th</sup> August,





2021 which was a Sunday and therefore in terms of section 60 (1) (e) of the Interpretation of Laws [Cap.1 R.E. 2019] the filing could have been made on 30<sup>th</sup> August, 2021 which was a Monday.

Until the 30<sup>th</sup> day of August, 2021 the applicant had not logged the appeal. According to the applicant's affidavit and submissions made by Mr. Sikalumba the reason for not filing the appeal on time was that, being a teacher by profession, she was engaged in invigilation of Form Four Mock Examinations which were being conducted at district level. The applicant contended that she was engaged in the invigilation exercise for the period between 19<sup>th</sup> July, 2021 up to 05<sup>th</sup> August, 2021. Thereafter, she was assigned to mark the examinations from 05<sup>th</sup> August, 2021 up to 12<sup>th</sup> August, 2021. She sought for assistance in logging the appeal and was subsequently informed that she was out of time. She proceeded to file the application on 02<sup>nd</sup> September, 2021. With the above extrapolation of facts, the question now is whether the above account has sufficiently explained away the delay.

It is trite law that, in an application for extension of time the applicant must account for every single day of the delay. This view was taken in various decision including the case of **Bushiri Hassan vs. Latifa Mashayo**, Civil Application No. 2 of 2007; **Bariki Israel vs. The Republic**, Criminal Application No.4 of 2011; **Crispian Juma Mkude vs Republic**, Criminal Application No.34 of 2012; **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) and **Ludger Bernad Nyoni vs National Housing Corporation** (Civil Appl No.372/01 of 2018) [2019] TZCA 154; (06 May 2019 TANZLII).

In **Bushiri Hassan vs. Latifa Mashayo** (supra) the Court held that:

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."*

As alluded above the reason for the delay is the applicant's engagement in her official duties as an invigilator and later and



examiner of Form Four Mock Examinations. Whilst I am aware that, courts have accepted certain reasons as amounting to sufficient reasons and no precise reason or reasons have been set out as standard sufficient reasons. I am convinced that for the applicant to succeed she must at least provide reasons which convincingly explain away the delay to institute an appeal within 30 days in compliance with section 25(1)(b) of the MCA. See **Abdallah Salanga & 63 Others vs Tanzania Harbours Authority**, Civil Application No. 4 of 2001 (unreported).

In **Ludger Bernad Nyoni vs National Housing Corporation** (Civil Appl No.372/01 of 2018) [2019] TZCA 154; (06 May 2019 TANZLII) the Court of Appeal quoted the decision of the Supreme Court of South Africa stated in *Uitenhage Transitional Local Council v. South African Revenue Service*, 2004 (1) SA 292 where it was held that:

*"Condonation is not to be had merely for the asking; a full detailed and accurate account of the causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the*

*reasons and to assess the responsibility. "[Emphasis added]"*

Throughout the application the applicant has failed to demonstrate how the invigilation exercise or assignment and the subsequent marking precluded her from processing the appeal. according to the affidavit at paragraph 7 and 8 the applicant made consultation between 16<sup>th</sup> and 17<sup>th</sup> August, 2021 and was informed she was out of time by her advocate in the name of Mariam Anthony Kapama. However, she did not offer any justification why she could not file her appeal during that period. Going by the records, she could have filed the appeal anywhere between the 29<sup>th</sup> day of July, 2021 when the decision was certified as being ready for collection up to the 30<sup>th</sup> day of August, 2021 when the thirty days expired.

In essence the applicant has not given any explanation for failing to appeal against the order of the district court in time. The fact that the applicant was pre-occupied in her "professional work" is not sufficient reason for extending time ~~4/2~~

However, I must say that, even assuming that she was indeed kept busy by her assignments, she could have still managed to prosecute her appeal. The schedule of allocation invigilators of the said examination, which was appended to her affidavit, shows that the applicant was free on several occasions, she may have utilized the period to make consultations on the lodgment of her appeal. She even went to collect the copies of the impugned decision on 29<sup>th</sup> July, 2021. In the circumstances she could have taken the necessary action. However, she did not take any steps. Further to that, her assertion that she was appointed as an examiner, were not supported by any document or evidence whatsoever. In the circumstances of this case, I am satisfied that there is inaction or inordinate delay on the part of the applicant.

I align with the position that those who come to courts of law must not show unnecessary delay in doing so: they must show great diligence. Otherwise, there would be no point of having rules prescribing periods within which certain steps have to be taken. See **Vodacom Foundation vs. Commissioner**





**General (TRA)**, Civil Application No. 107/ 20 of 2017 (CAT-DSM) (unreported). If the applicant was really delayed by some good cause she should have accounted for each day of the delay by providing a full detailed and accurate account of the causes of the delay and its effects on her ability to act on time. Short of that, her application destitute of merits.

Having considered all the circumstances before me, I am satisfied that the applicant has failed to demonstrate good or sufficient cause for this Court to exercise its discretion in condoning the delay. The application is wanting in merits. It stands dismissed with costs.

**Order accordingly.**

**DATED at MOROGORO this 24<sup>th</sup> day of NOVEMBER,**

**2021.**



A handwritten signature in blue ink, appearing to read "S.M. Kalunde".

**S.M. KALUNDE**

**JUDGE**