

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

MISC. CIVIL APPLICATION NO. 680 OF 2020

(Arising from Civil Appeal No. 102 of 2019 of District Court of Ilala at Samora)

ARAFAT SEMINDU MNGUJANGA..... APPLICANT

VERSUS

SALAMA GAITAN SALILA.....RESPONDENT

RULING

30th August, 2021 – 07th October, 2021

N. R. MWASEBA, J.

This is a ruling on application for extension of time within which the applicant may file an appeal out of time against the decision of Hon. D.P. Nyamkera, RMI vide Civil Appeal No. 102 of 2019 of District Court of Ilala at Samora.

The application is made under Section 14(1) of Law of Limitation Act, Cap 89, R.E 2019 and Section 95 of Civil Procedure Code, R.E 2019 and is being supported by the affidavit of ARAFAT SEMINDU MNGUJANGA.

On 16th March, 2021 this court ordered the application to be disposed of by way of written submission, and I am grateful both parties adhered with the instructions and filed their respective submissions timely.

Submitting in chief, the applicant prayed to adopt the content of the affidavit and stated that, the impugned decision was delivered on 18th February, 2020 and he was present and prayed for the copy of the decision orally but failed to get the said copy of the judgment.

On 3rd April, 2020 the applicant wrote a letter requesting to be supplied with the copy of the decision (*attached in the affidavit and marked as Exhibit B*). On 20th November, 2020 the applicant received a copy of the judgment while the time for appeal had already expired and to his surprise contrary to what he heard on 18th February, 2020 he was awarded 20% of the matrimonial home instead of the 80% awarded earlier.

Dissatisfied with the decisions, the applicant filed a formal complaint to the District Resident Magistrate Incharge (*copy of the letter attached in the affidavit and marked as Exhibit C*) and due to the substitution of the judgment, the applicant was shocked and fell sick, hence failing to appeal in time, the situation which resulted to this application (*medical form marked as Exhibit D*). The failures were not deliberate, and the judgment was on his favour until it was changed.

However, this application was heavily resisted by the respondent, to which he also prayed for the court to adopt her counter affidavit. The

respondent submitted that, the application should be dismissed with costs because it is misconceived, as it totally failed to show good cause as to why the applicant failed to appeal within the required time to enable the court to exercise its discretional power to grant extension of time.

The applicant was aware that he was awarded 20% as after the pronouncement of the judgment he approached the respondent's counsel, one Jonas Majungu Munyaranga telling him his intention to appeal and inquire on the procedures (*the affidavit is attached in counter affidavit and marked as exhibit SGS-2*) and what is stated by the applicant is fabrication and the court should disregard it and he cited the case of **Glory Sifwaya Samson v Raphael James Mwinuka, Civil Application No. 506/17 of 2019, court of Appeal of Tanzania.**

Also, the medical form attached and marked as Exhibit D in the applicant's affidavit shows that, the applicant was admitted to the hospital for 15 days only, that is from 21st November, 2020 to 05th December, 2020 and the present application was filed on 21st December, 2020 and the applicant failed to account the delay from 6th December, to 20th December, 2020.

The letter requesting copies of the judgment does not indicate the reception date and it is not stated in the applicant's affidavit. The general principle of granting extension of time is that there must be sufficient reasons to warrant the court and every day delayed must be accounted for. However, in the present application, the applicant failed

to adduce those reasons hence this application is unfounded and it should be dismissed with cost.

Rejoining the appeal, the applicant reiterated what he stated in submission in chief of which I do not intent to reproduce. To begin with, as a matter of general principle that whether to grant or refuse an application for the extension of time is entirely in the discretion of the court. But that discretion is judicial and so it must be exercised according to the rules of reason and justice.

The case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)** formulated the guidelines for the court to follow when dealing with the issues of the extension of time.

In that case, the court reiterated the following guidelines for the grant of extension of time:

- "(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there 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."

The above assertion has been reflected in various cases which I find no need to mention. In the case at hand, the applicant stated that the impugned judgment was held on 18th February, 2020 and wrote a letter to request for the copies of the judgment on 3rd April, 2020 (*Exhibit B*). And, on 20th November, 2020 the applicant received a copy of the judgment while the time for appeal was already expired. Perusing the lower court file, it is without dispute that, the said judgment was read on 18th February, 2020 and there is a letter requesting for the copies of the judgment addressed to the District Court Magistrate Incharge and the letter was stamped by court stamp although the copy filed has faded and makes it hard to see the date of reception but the said letter was received by the trial court.

The applicant complained to have his judgment substituted, that is, what he heard on the day of judgment was different from what he read when he had obtained the copy of the judgment. Proving this the applicant filed formal complaint to the District Magistrate Incharge vide his letter of 26th November, 2020 (*marked as Exhibit C*) and again the court stamp was faded but it was received by the trial court. This assertion was disputed by the respondent stating that, the applicant was aware of the division of matrimonial properties in the judgment and he even inquired on the procedure and supported his argument with the counsel affidavit (*marked as Exhibit SGS-2*).

I find the above narration to be an administrative argument and the records are silent on the reply or steps taken by the Magistrate Incharge and I tend to leave it for proper administrative procedures.

Throughout the submission, it is not disputed by the respondent that the applicant made an oral request of the copies of the decisions until he was advised to make a formal request and he received the certified copies of the judgment on 20th November, 2020 and then he fell sick and was admitted at Mbezi Health Center (*see medical form No. 38625 herein marked as Exhibit D*) and discharged on 5th December, 2020.

All these efforts suggest that, the applicant was active following up the copies of judgment and the proceedings since it was delivered and unfortunately, in the due process, he fell sick.

Section 14(1) of the Law of Limitation Act, Cap 89, R.E 2019 provides that:

"Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."

This section allows the court to extend time upon sufficient cause or reasonable cause adduced of which this court finds that, the applicant had sufficient reasons.

Further, Section 19(2) of the Law of Limitation (supra) states that:

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

From the case at hand the respondent stated that the period from 5th December, 2020 to the date the applicant filed this application is not accounted. It is again not disputed that the applicant could not directly institute the case on the very date he was discharged from hospital but rather he must have some reasonable time to gather his strength. With the spirit *of overriding objectives which requires the courts to deal with cases justly, and to have regard to substantive justice, where courts are empowered to cut over-reliance on procedural technicalities (see: Yakobo Magoiga Gichere v Peninah Yusuph, Civil Appeal No. 55 of 2017, Court of Appeal of Tanzania at Mwanza)*, it is my considered opinion that the applicant has justified reasons to be given extension of time.

Hence, I hereby grant the applicant extension of time to appeal out of time; the applicant has to file his petition within fourteen days from the date of this ruling. No order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 7th day of October, 2021

