

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. CIVIL APPLICATION No. 164 OF 2020**

*(Arising from matrimonial appeal No. 01 of 2007 of Magu District Court, originated  
from Civil Case No. 42 of 2006 of Kalembera Primary Court)*

Between

**RECHO JOSHUA ..... APPLICANT**

**VERSUS**

**CHARLES YONGÓLE ..... 1<sup>ST</sup> RESPONDENT**

**MEDA JOSEPH.....2<sup>ND</sup> RESPONDENT**

**RULING**

4/4/2022 & 20/6/2022

**ROBERT, J:-**

The applicant, Recho Joshua, seek to be granted an order for extension of time to lodge an application for revision against the decision of the District Court of Magu in Matrimonial Appeal No. 01 of 2007 which originated from the Primary Court of Kalembera in Civil Case No. 42 of 2006. The application is grounded on the reasons stated in the affidavit sworn by the applicant in support of this application.

Briefly stated, facts relevant to this application reveals that, on 25/7/2006 the first respondent sold to the applicant a property located at

Lamadi township in the District of Busega. On 23/4/2015 the applicant received a notice from Court broker who was ordered by Magu District Court to sell the said house. At that time the applicant became aware of the existence of Civil Case No. 42/2006 filed at Kalemera Primary Court and the Matrimonial Appeal No. 01/2007 filed at Magu District Court. The two cases had decided on the property bought by the applicant from the 1<sup>st</sup> respondent without joining the applicant as a party to the cases. The applicant filed objection proceedings vide Misc. Civil Application No. 10/2015 at Magu District Court which was dismissed on 11/3/2016 for reasons that the application was supported by a defective affidavit.

On 4/3/2016 the Applicant was allegedly admitted at Bugando Hospital in Mwanza region for pregnancy complications which led to her giving birth through surgery. She was discharged on 9/3/2016 and she continued to attend the hospital for regular check-ups until 27/4/2016. After that she was allegedly instructed to take a rest without movement for six months which is up to January, 2017. The medical report was attached as proof. Despite being sick the Applicant instituted another Misc. Civil Application No. 30/2016 at Magu District Court. However, prior to its hearing the second Respondent rejected the presiding magistrate. While the applicant was awaiting for another magistrate to be appointed

to preside over the matter she was hit with another scheduling auction of the said property which got its blessing from Misc. Application No. 16/2019 which the applicant was not informed about. Consequently, she filed Misc. Application No 10 of 2020 at this Court praying for stay of execution, extension of time and revision of matrimonial appeal No. 01/2007 at Magu District Court which was struck out on 14/8/2020. Then she was diagnosed with a sickness which led to her being hospitalized. Hence the present application.

At the hearing of this application, the applicant was represented by Mr. Bakari Chungwa Muheza, learned counsel who submitted that, this application is grounded on two reasons; first, the applicant's delay is technical as the applicant has been in court throughout this time as detailed in her affidavit filed in support of this application. To bolster his argument, he cited the case of **Emmanuel Rurihafi & Another Vs Jonas Mrema**, Civil Appeal No. 314 of 2019 CAT Dsm (unreported) where the Court of Appeal decided to the effect that where the delay is technical the applicant may be granted extension of time.

Secondly, he submitted that, the applicant was sick and therefore she couldn't proceed with the matter due to sickness.

She further added that, matrimonial appeal No. 1 of 2007 made a decision on the property of the applicant without joining her as a party to the case. He maintained that interest of justice demands that the applicant be heard in respect of the said property.

The 1<sup>st</sup> respondent appeared in person without a legal representative. He informed the Court that he had no objection to the prayers made. As a consequence, there was no rejoinder made by the applicant.

The question for determination in this application is whether the applicant has managed to demonstrate sufficient cause for the delay to merit granting of this application.


In the case of **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.**, Civil Reference No. 18 of 2006 (unreported) the Court observed that:-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted."*

It is not disputed that the applicant started to pursue her rights in this matter immediately after becoming aware of the Court decisions in respect of the disputed property which happened after receiving a notice from the Court broker who was ordered to sell the dispute property. Her delays, as shown in the records, were mainly caused by technical issues. Further to that, the applicant's delays in the course of the proceedings at the lower court are also attributed to her sickness which is not resisted by the respondents. In the circumstances, this Court finds no reason to deny this application. Application is granted, the applicant is given 14 days from the date of this ruling to file her application for revision.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
20/6/2022