

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 49 OF 2021**

*(C/f Juvenile Court of Manyara at Babati, Misc. Civil Application No. 10 of 2021)*

**SEBASTIAN JOSEPH MATIYA ..... APPLICANT**

**VERSUS**

**REHEMA GWANDU DORIYE ..... RESPONDENT**

**RULING**

24/05/2022 & 05/07/2022

**KAMUZORA, J**

The Applicant preferred this application for extension of time within which to file an appeal against the decision delivered by the Juvenile Court of Manyara at Babati in Misc. Civil Application No. 49 of 2021. The application was made by way of chamber summons under section 14(1) of the Law of Limitation Act Cap. 89 R.E 2019 and was supported by an affidavit sworn by the Applicant himself. The application was contested through counter affidavit sworn by the Respondent.

Hearing of the application was done by way of oral submission and the Applicant appeared in person with no legal representation while the

Respondent was ably represented by Mr. Paschal Peter, learned advocate.

Submitting in support of the application the Applicant argued that, his application is for extension of time to appeal out of time. The reason advanced for the delay was that, the Applicant was sick from 03/05/2021 to 09/05/2021. He also prayed for this court to consider his affidavit and grant the application.

Contesting the application, the counsel for the Respondent submitted that he does not agree with the Applicant's reasons of sickness as it is a lie and cannot be proved. That, the claim by the Applicant that he was sick from 03/05/2021 differs with the document attached to his affidavit which indicates that he was sick on 16/05/2021.

That, since the facts in the affidavit differs with the document attached, it proves that the facts are false and since the affidavit contains false information the same cannot support the application. The counsel for the Respondent went on and submitted that, the Applicant was unable to account for each day of the delay and did not explain if he was admitted or he was just treated and discharged. That, there is no any valid document like hospital card showing that the Applicant was really sick and went to the hospital. He added that, the Applicant was

negligent and that is why he was unable to appeal on time. He thus prays for the application to be dismissed with costs.

Upon a brief rejoinder, the Applicant submitted that, there is a human error as the Respondent in her counter affidavit also erred and wrote a wrong date. Regarding the attachments he argued that, he brought a letter from the doctor and if it is a lie then the information be verified at the Bashnet Hospital.

I have considered the application, the sworn affidavit of the Applicant which lays the basis of this application and the submissions by the parties. The Applicant is seeking for enlargement of time to file an appeal out of time. The provision of the law cited by the Applicant in moving this court is section 14(1) of the Law of Limitation Act Cap 89 R. E 2019 which provides that,

*"(1) 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."*  
Emphasis provided.

As a matter of general principle, whether to grant or refuse an application for extension of time is entirely in the discretion of the Court but that discretion is to be exercised judiciously. With the wording of the above provision, the court can grant extension of time where reasonable and or sufficient cause is shown by the Applicant. The overriding consideration is that, there must be sufficient or good cause to justify the court to extend time within which to file an appeal or revision or an application out of the prescribed period. See the decision in the case of **Tumsifu Kimaro (The Administrator of the Estate of the late ELIAMINI KIMARO) vs. Mohamed Mshindo**, Civil Application No. 28/17/2017 CAT at DSM (Unreported).

It is also the requirement of law that, in the application for extension of time each day of the delay must be accounted for. It was contended by the counsel for the Respondent that the Applicant has shown no good cause for the grant of extension and failed to account for each day of delay and that he was negligent hence could not appeal on time. Thus, the question to be determined by this court is whether the Applicant have established sufficient cause for this court to exercise its discretionary powers to grant the application sought.

From the facts deposed in the Applicant's affidavit as well as the attachments there to it appears that, the judgment of the Juvenile Court of Manyara intended to be appealed against was delivered on 28<sup>th</sup> April 2021. Under paragraph 4 and 6 of the Applicant's affidavit the Applicant has adduced the reason of sickness as a ground for extension of time. That, on 02/05/2021 he was sick and hospitalised to Bashnet hospital where he was admitted from 03/05/2021 to 09/05/2021 and continued attending as outpatient thus unable to lodge the appeal on time.

I understand that sickness if proved can be a ground for the court to exercise its discretion in granting the application. That position was set by the Court of Appeal in different cases. The Court of Appeal in the case of **John David Kashekya Vs. The Attorney General**, Civil Application No 1 of 2012 (Unreported), referred the case of **Pimark Profesyonel Mutfack Limited Sirket Vs. Pimak Tanzania Ltd & Another**, Misc. Commercial Case no 55/2018 HC AT Dar es Salaam (Unreported) at page 9 and held that: -

*'Sickness is a condition which is experienced by a person who is sick. It is not a shared experience. Except for children who are not yet in position to express his or her condition whether she or he has strength to move, work and do whatever kind of work he is required to do. In this regard, it is the Applicant who says he was*

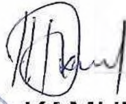
*sick, and he produced medical chit to show that he reported to a doctor for check-up ... There is no evidence from the Respondent to show that after that period, his condition immediately become better and was able to come to court and pursue his case. Under such circumstances, I do not see reasons o f doubting his health condition. I find the reasons for sickness given by the Applicant to be sufficient reason for granting the Applicant for extension of time to file..."*

Reading the content of annexure A1 which is a letter dated 16/05/2021 it indicates that the Applicant was treated as from 03/05/2021 to 09/05/2021. The time to lodge an appeal to the High Court is 30 days and counting from 28/04/2021 when the decision was delivered, the time frame for appeal lapsed on 28/05/2021. The present application was brought to court on 16/06/2021 as per exchequer receipt No. EC100942442875. From those records, the Applicant was within time to appeal when he became sick from 03/05/2021 to 09/05/2021. He was therefore responsible to state as to why he could not appeal after the lapse of time to appeal. In other words, the Applicant was responsible to account the delay from 29/05/2021 to 16/06/2021 when this application was filed in court. The Applicant has made a general submission that the delay was attributed by the ground of sickness. But the Applicant failed to prove that he was sick at the time

he was required to file her appeal before this court and there was no any other reason kept forth by the Applicant explaining on his lateness in filing his appeal before this court.

In the upshot and with regard to all what has been stated above, the application is devoid of merit and its hereby dismissed. In considering that this matter emanates from the application for maintenance of children born between the parties I make no order as to costs.

**DATED** at **ARUSHA** this 5<sup>th</sup> day of June, 2022.

  
D.C. KAMUZORA  
JUDGE  