

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TEMEKE HIGH COURT SUB-REGISTRY)
(ONE STOP JUDICIAL CENTRE)
AT TEMEKE**

CIVIL APPEAL NO. 3 OF 2022

(Arising from Misc. Civil Application No. 153 of 2021 of the Kinondoni District Court before Hon. D.D. Mlashani – RM, original Matrimonial Cause No. 28/2020 of the Primary Court of Kinondoni District at Magomeni before Hon. V. Manega - RM)

KULTHUM JUMAAPPELLANT

VERSUS

ISSA SIMBILI.....RESPONDENT

JUDGMENT

26/05/2022 & 06/07/2022

I.C. MUGETA, J

This appeal is founded on seven grounds which I shall not reproduce. They raise a general issue which calls for my determination. This is whether a party who fails to appeal in time and whose application for extension of time to appeal out of time has been dismissed can apply and be granted extension of time to file an application for revision out of time. The brief facts of the case are as follows:



The parties were husband and wife. Their marriage was dissolved by the primary court on 22/5/2020. The respondent was aggrieved by some orders and wished to appeal. However, he found himself out of the prescribed appeal period. He applied for extension of time which application was dismissed on technical reasons. Then he filed an application which is subject of this appeal. The district court granted the application. The appellant was aggrieved, hence, this appeal.

The issue which I shall answer shortly was raised before the district court but it never addressed it despite alluding to it in the ruling. In its ruling the district court acknowledged that the application by the respondent for extension of time to appeal out of time was dismissed. Nevertheless, it held:

'This court is not a court of technicalities but a court of substantive justice. Therefore, I see no injustice shall be incurred (sic) to the respondent in case I grant the prayer for filing revision as prayed by the applicant'.

The appellant is represented by Tumaini Mfinanga, advocate. The respondent is unrepresented. Counsel for the appellant has submitted that where the right of appeal is open, the court cannot invoke its

revisional powers. He cited the case of the **Registered Trustees of Social Action Trust Fund & Another V. Happy Sausages Ltd & Others** [2002] T.L.R 285. I agree that revision proceedings are not intended to be a substitute of the appeal process.

The respondent has replied that since the issue before the district court was extension of time, the determination of whether the intended application for revision is tenable as raised by the appellant is misplaced. The matter, he submitted, can be raised when the application itself is filed not when an application for extension of time is being considered.

With respect, I do not agree with the respondent. The discretion to extend time within which an act can be performed is subject to the court extending time having jurisdiction over the intended action. If the law is that revision is not a substitute of an appeal, the district court cannot be said to be right in holding that substantive justice matters more. While I agree with the district court that era is gone when cases are decided on technicalities, it is equally true that substantive justice is subject to other relevant factors like jurisdiction

of the court. Under the facts of this case, after the district court dismissed the application for extension of time, its jurisdiction to determine the same matter by way of revision or appeal was removed. This took away its powers to extend time to file revision too. An aggrieved party ought to have appealed or refiled an application for extension of time depending on the nature of the final orders made by the court.

Further, there are three major conditions by which an application for revision can be entertained. These are firstly, where the applicant was not a party to the original case. Secondly, where the right of appeal is barred by law or does not exist and thirdly, when the court exercises that jurisdiction *suo motu* or in response to a complaint or other factors like inspection. None of those conditions exist in this case to enable the district court to exercise its revisional jurisdiction. That being the case, it cannot grant a prayer for extension of time to file a revision.

Other complaints raised in the appeal are that the respondent's application did not establish a good cause to warrant the sought

orders and he did not account for each day of the delay. In the light of the above finding, there is no need to address these complaints.

In the event, I find merits in the appeal. It is allowed. The decision of the district court is quashed. No orders as to costs.



Mugeta
I. C. MUGETA

JUDGE

06/07/2022

Court: - Judgment delivered in chambers in the presence of all parties who appeared in person.

Sgd: I. C. MUGETA

JUDGE

06/07/2022