

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CIVIL APPEAL NO 28 OF 2021

(Arising from Misc. Civil Application No. 16 of 2021 in the Resident

Magistrate's Court of Musoma at Musoma)

ANTHONY WARIOBA MASANZAAPPELLANT

VERSUS

VERENA MATEREGORESPONDENT

JUDGMENT

23th March & 1st April, 2022

F. H. MAHIMBALI, J.:

In this appeal, the appellant is dissatisfied with the ruling of the trial Court which refused to grant extension of time to set aside dismissal order in Misc. Civil Application No 31 of 2020.

Background facts behind this ruling can be stated as follows. Originally, there was filed Resident Magistrate Civil Case No 30 of 2019 at Resident Magistrate's Court of Musoma which was heard ex parte and its judgment delivered on 20/4/2020.

Following that ex parte judgment, the appellant promptly filed Misc. Civil Case No 15 of 2020 to set aside the ex parte judgment but the same was struck out on reason of incompetence.

This then led the appellant to file Misc. Civil Application No 31 of 2020 seeking extension of time to set aside the ex parte decree. The same was dismissed for want of prosecution. This dismissal order, gave birth to Misc. Civil Application No 16 of 2021 seeking extension of time to set aside the dismissal order in Misc. Civil Application No 31 of 2020. The said application was dismissed for want of accounting each of delayed days.

Aggrieved by this last decision, the appellant has preferred this appeal on three grounds:

- 1. That, the trial Court in law and fact by holding that the appellant failed to account each day of delay within which to file application to set aside.*
- 2. That, the trial Court erred in law and fact for failure to consider the reasons adduced by the advocate of the Applicant.*
- 3. That, the trial Court erred in law and fact for deciding the matter without considering the circumstance of the case.*

During the hearing of the appeal, the appellant was represented by Mr. Edson Philipo whereas the respondent defended herself.

Arguing for the appeal, Mr. Edson Philipo just said in his submission, I quote:

"The basis of this appeal is refusal to set aside the dismissal order of the trial Court on ground of accounting the delayed days. As there was an ex parte decree, we wish it to be set aside. Considering that the parties are spouses, I humbly pray that this appeal be allowed. That is all."

I wonder if this submission in the circumstances of this case will amount to challenging the trial court's findings. I had expected that there be would be serious criticism of the trial court as to why he failed to consider the application if so accounted each delayed day.

Since an application for extension of time is court's dis-creation to grant or refuse it, it was expected a serious deliberation by the appellant's counsel challenging the refusal order of the trial court.

Since there has not been accounting of each of the delayed days, the refusal order by the trial court was justified (See the case of **Ngao Gidion Losero vs Julius Mwarabu**, Civil Application NO 19 of 2021 **Lyamuya Construction Company Ltd vs Board of Reg. Trustees**

of Young women's Christian Association of Tanzania, Civil Application No 2 of 2010, Court of Appeal).

Whether there has been accounting of each day of delay. The trial Magistrate ruled that there was an accounted 37 days of delay.

The law is, there must an accounting of each day of delay (see **Charles Puntaleo Kingoka vs Abasa Musa Kitoi,** Civil Application No 71/76 of 2019).

That said, the appeal is of no merit. The same is hereby dismissed for want of merit.

As it involves spouses, I make no order as to costs

DATED at MUSOMA this 1st day of April, 2022.




F. H. Mahimbali

Judge

Court: Judgment delivered this 1st day of April, 2022 in the presence of the Respondent, Mr. Gidion Mugo – RMA and the appellant being absent.


F. H. Mahimbali

Judge

1/04/2022