

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

**MISC. CIVIL APPLICATION NO. 110 OF 2020**

*(Matrimonial Cause No. 1 of 2018, District Court of Monduli at Monduli)*

**SAFINA MIGIRE .....APPLICANT**

**VERSUS**

**PHILIPO AMI @ MAYSHO AMA SILLO ..... RESPONDENT**

**RULING**

26/07/2022 & 11/08/2022

**KAMUZORA, J.**

The Applicant herein lodged this application under section 14 of the Law of Limitation Act, Cap. 89 R.E 2019 seeking for extension of time within which to file revision application out of time. The application is supported by the affidavit sworn by the Applicant and contested through the counter affidavit sworn by the Respondent.

When the matter was called for hearing, the Applicant was represented by Mr. Richard Manyota, learned counsel. The Respondent did not appear except that the report was made on his demise. The court directed the counsel who made such a report to ensure compliance to the legal requirement but the report was made to the

court that the relatives of the deceased were not interested in instituting the probate and administration cause for purpose of protecting the deceased interest. This court opted to proceed with the hearing of the application in considering the fact that the Applicant had a right to be heard and the reluctance of the deceased's family cannot vitiate the rights of the other party.

A brief history of the matter as depicted from the records is such that, the Applicant and the Respondent were parties in Matrimonial Cause No. 1 of 2018 whereas the Applicant was declared to be the trespasser to the house claimed to be a matrimonial house. In an attempt to challenge the said judgment, the Applicant found himself time barred hence the current application.

Submitting in support of the application, Mr. Manyota adopted the contents of the affidavit and argued that, the Applicant was unable to file the revision application on time for two reasons; one, that, the Applicant was charged with a Criminal Case No. 122/2021 at Mto wa Mbu Primary Court and was convicted and sentenced to a conditional discharge for 4 months. Two, that, the Applicant had no knowledge of the legal procedure and after the decision in matrimonial Cause, the trial magistrates directed the parties in respect of properties which are not

matrimonial properties to file a case to the court with competent jurisdiction. She filed Land Application No. 220/2019 against the Respondent at the DLHT an application which is still pending.

Apart from the above two reasons, the counsel for the Applicant raised a point of illegality as the reason for extension of time. He submitted that, there is illegality in the proceedings in Matrimonial Cause No. 1/2018 as the Applicant did not file a petition of divorce but rather a plaint and it was the court itself that changed the title of the suit without availing the parties a right to be heard to address the court on the changes of the suit. That, prior to the institution of the suit at the trial court the parties went to the marriage conciliation board which did not reconcile the parties by giving them a certificate of reconciliation. That, the board issued a decision that the Applicant was a trespasser and should leave the disputed property. That, after the decision by the marriage conciliation board the Respondent filed an application for execution at the DLHT in Misc. Application No. 89 of 2020 and the decision was issued in favour of the Applicant by setting aside the decision of the conciliation board.

Referring the cases of **Emmanuel R. Maira Vs The District Executive Director of Bunda Council**, Civil Application No 66 of 2010

CAT at DSM and **Michael Lesan Kweka Vs. Johnn Eliafye** [1997]

TLR 152, the counsel for the Applicant insisted that, the Applicant has shown diligently steps but only to be taken in the web of technicalities. He was of the view that the Applicant has shown sufficient cause for the grant of extension of time hence, prays the application to be allowed.

The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay. It is a trite law that, the grant of extension of time is a matter of discretion of the court, the discretion which however, must be exercised judiciously. The reasons for the delay have been stated by the Applicant under paragraph 7 and 8 of the affidavit filed in support of the application to be the execution application No. 89 of 2020 filed at the DLHT as well as the reason for sickness. However, during the hearing of the application, the reason for sickness was not argued and or elaborated by the counsel for the Applicant hence this court will regard the same as being abandoned.

During the submission in support of the application the counsel for the Applicant raised new issue such that the Applicant was faced with a criminal case which led to her conviction and later sentenced to a conditional discharge. Since this ground is not amongst the grounds

deponed under the affidavit filed in support of the application the same will not be regarded by this court in reaching its decision.

Coming to the other reason that there existed a suit at the DLHT that is, Misc. Application No. 89/2020 resulting from the decision of marriage conciliation board, it is on record as per paragraph 6 that, the parties went to the so-called marriage conciliation board even before the institution of the case at the trial court hence cannot amount to one of the reasons for the extension of time. Apart from being pleaded at paragraph 7 of the affidavit, there is no any document attached to the affidavit verifying the existence of Misc. Application No. 89/2020. Even if it exists, there is no explanation how such application barred the Applicant from filing the revision application in time. Thus, this court cannot consider it as a good reason for extension of time.

From the case of **Bushiri Hassan Vs. Latifa Mashayo**, Civil Application No 3 of 2007 (Unreported) it was held that,

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps has to be taken."*

In this matter and in considering the above argument, it is my settled mind that the Applicant was unable to account for the delay.

Thus, the reason that the Applicant was prosecuting an application before the DLHT does not justify the grant of extension of time.

On the point of illegality, it is in my knowledge that illegality if apparent on the face of record can be among the reason for the grant of extension of time. It was submitted by the counsel for the Applicant and deponed at paragraph 5 of the Applicant's affidavit that, the Applicant filed a plaint on civil claim and not a petition for divorce but the district court on its own motion changed the title of the suit without availing the parties a right to be heard to address the court on the changes of the suit. The plaint to that effect was appended to the affidavit indicating that the Applicant filed a civil suit.

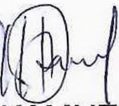

Similarly, the judgment of the district court in respect of the same parties indicate that it was titled matrimonial cause No. 1 of 2018. Looking at the prayers raised in civil suit and the issues raised for determination by the trial court, it become obvious that there are illegalities in the face of records which the court will need to hear both parties for better determination of the same.

In considering the point of illegality, I conclude that there is a reason to warrant the grant of extension of time. The application is therefore granted for the Applicant to file an application for revision

within 14 days from the date of this ruling. Taking into consideration the nature of the application, no order for costs is made.

Order accordingly.

**DATED** at **ARUSHA**, this 11<sup>th</sup> day of August, 2022

D.C. KAMUZORA  
JUDGE

