

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(HIGH COURT TEMEKE SUB - REGISTRY)

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC CIVIL APPLICATION NO. 1 OF 2022

(Original Matrimonial Cause No.38/2020 of the District Court at Kinondoni)

BEDA BENADICTO MBAIZA.....APPLICANT

VERSUS

ZAINABU RAMADHANI.....RESPONDENT

RULING

30/03/2022 & 28/4/2022

I.C. MUGETA, J

Having delayed to appeal in time against the division of the District Court, the applicant has applied for extension of time to appeal out of time. The reason for the delay are two told. Firstly, on the matter of fact that immediately after delivery of the judgment he travelled to Bukoba to attend his sick mother where he stayed for 7 months (paragraph 5-7 of the affidavit). Secondly, that the judgement has illegalities in that it is premised on evidence which was not tendered at the trial court.

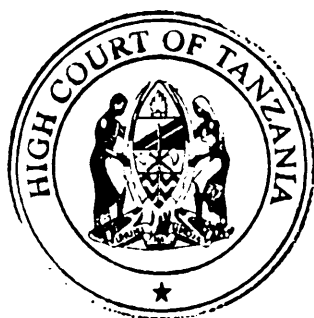
The respondent disputes all facts averred by the applicant in that they live in the same house and at no point in time the applicant traveled to Bukoba. Further, that he has failed to produce medical chit of his mother's treatment (paragraph 4 of the counter affidavit). On illegalities, the respondent avers that the decision is pegged on a careful analysis of the evidence tendered in the Primary Court (paragraph 6 of the counter affidavit).

Indeed, the applicant did not tender evidence of his mother's sickness as a reason for his travel. Therefore, even if it is assumed that he actually traveled, the reason of that mission is not proved which makes the first ground for the delay meritless.

However, I find merits in the allegation of illegalities in the impugned judgment. At the last page of the judgment (the judgment has no page numbers) the learned magistrate states: -

"Coming to the present application, it appears in affidavit of the application in paragraph 4 (ii) which supported by annexure "A" (sale agreement) to form part of the applicant's affidavit. The sale agreement shows that, the plot was bought by the applicant in(sic) 15 January, 2004. However, on 3rd May 2014 they got married. Therefore, this court found (sic) that, the house in disputed is (sic) belong to the applicant".

If follows, therefore, that the trial court relied on annexure "A" in the affidavit to reach to its decision. If annexure "A" was not tendered in evidence the complaint has merits. However, this is an issue to be decided on appeal and not in an application for extension of time. On the account of the alleged illegality, I hereby grant the application. The intended appeal to be filed within 20 days from the date of this order. No orders as to costs.



Mgeta
I.C. MUGETA

JUDGE

28/4/2022

Court: - Ruling delivered in chambers in the presence of the applicant, respondent is absent.

Sgd: I.C. MUGETA

JUDGE

28/4/2022