

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 441 OF 2021

SYLEVSTER MANYANGU.....APPLICANT

VERSUS

GRACE MANYANGURESPONDENT

RULING

MRUMA,J.

By way of chamber summons supported by affidavit, the Applicant sought for an order of this court extending time within which he can lodged an appeal to this court to challenge the decision of District Court of Kinondoni in Matrimonial Cause No. 81 of 2020.

The application is brought under section 14(1) of the Law of Limitation Act [cap 89 RE 2019] and as is the practice it is supported by the affidavit sworn by the Applicant. Sylvester Manyangu. The grounds of the application as set out in the supporting affidavit are that:

- i. That the Judgment of the District Court of Kinondoni in Matrimonial Cause No. 81 of 2021 was delivered on 15th July 2021.

- ii. That on 27th July 2021, the Applicant wrote to the District Court to request that court to supply him with a copy of Judgment for appeal purposes.
- iii. That a copy of Judgment was availed to him on 20th August 2021.

This application was presented for filing on 30th August 2021.

According to Mr. Joseph Sang'udi Counsel for the Applicant, the Applicant was not satisfied with the judgment of the District Court in Matrimonial Cause No. 81 of 2021 and promptly applied for a copy of the Judgment for that purposes.

Counsel argued me to find that there was sufficient reason why the Applicant could not file his appeal on time and grant the application so that the Applicant can file his appeal out of time. He relied on the authority of M/s Herkin Builders Limited Versus. The Permanent Security, Minister of Finance And Economic Affairs And Another Misc. Land Application No. 773 of 2018(High Court), to the effect that in order for the court to establish as whether there was good cause or sufficient reasons, depends on whether there was diligence of the part of the Applicant.

Counsel Melchior Havioubano for the Respondent opposed the application. In this view the Applicant had not produced any evidence to prove that he applied for the said copies on the mentioned date.

Section 14(1) of the Law of Limitation Act, under which the application for extension of time was brought provides;

“Notwithstanding the provisions of this Act, the court may for any reasonable or sufficient cause extend the period of limitation for institution of an appeal or an application, other than an application for execution of decree, and an application for such extension may be made either before or after the expiry of limitation period prescribed for such appeal or application”.

The power given to court under the above provision of the Law is discretional. Before it is exercised, court is ought to find that sufficient reason has been shown by the Applicant for not doing what he was supposed to do after the pronouncement of the impugned judgment.

In the present case, the Applicant has shown that the promptly lodged a request letter asking for a copy of judgment within 24 hours after the judgment. Court before exercising its discretion ought to lift the

veil and see who is likely to suffer most if justice is denied on the ground of delay in filing an appeal. The subject matter according to the evidence on record is division of properties of the marriage which was done by "*family members*" and endorsed by the court, in this circumstances there is likelihood that parties may suffer injustice. I find that sufficient reason has been established to warrant the grant of the Application. Extension of 14 days is granted. Costs normally follow the event, however it is in the discretion of court to order who should bear the costs. This being a matrimonial matter I order that each party shall bear own costs



A. R. MRUMA

JUDGE

3/8/2022

3/8/2022

Coram: Hon. A.R.Mruma,J

For the Applicant: Present (Mr Joseph Sangudi for)

For the Respondent: Absent (Mr. Melkiory Hurubano for the Respondent.

Cc: Delphina

Court: Ruling delivered.


A. R. MRUMA

JUDGE

3/8/2022