

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM  
MISC. CIVIL APPLICATION NO. 435 OF 2021**

*(Arising from Misc. Civil Application no. 446 of 2020; in the matter of an application for custody, Juvenile Court of Dar es salaam at Kisutu)*

***BETWEEN***

**SABIRA MOHAMED AYOUB..... APPLICANT**

**AND**

**FAHIM MOHAMED GOA.....1<sup>ST</sup> RESPONDENT  
SABRINA ABBAS OSMAN.....2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last order: - 13/07/2022  
Date of the ruling: - 19/09/2022

**OPIYO, J.**

This is a ruling on an application for an extension of time within which the applicant may file an appeal out of time against the ruling and orders of the Juvenile Court of Dar es Salaam at Kisutu in Misc. Civil Application No.446 of 2022.

This application is made under section 14(1) of the Law of Limitation Act, Cap 89, R.E 2019 and is being supported by the affidavit of Peter Kibatata, counsel for the applicant.

Upon several adjournments and endless efforts of issuing summons to the respondents to appear in court, on 8<sup>th</sup> April 2022 this court ordered the application to proceed *ex parte* against both respondents.

Supporting the application, the applicant's advocate stated that Sabira Mohamed Ayoub is an old lady who is simply trying to protect the welfare and interest of an infant child, Farhan Mohamed, who is begotten between the 1<sup>st</sup> respondent who is the applicant's son and 2<sup>nd</sup> respondent who is the 1<sup>st</sup> respondent's wife due to cruelty and neglect of the respondents.

Stating on the background of the application is that on 10<sup>th</sup> March 2021 the Juvenile Court of Dar es Salaam at Kisutu vide Misc. 446 of 2020 granted custody of the said infant to the 1<sup>st</sup> respondent, the applicant is out of time to pursue an appeal against the ruling and orders of the Juvenile Court, an appeal being the remedy that verily believes to be remedial measures available to the applicant.

The applicants counsel stated that, the following are the bases of their appeal, that there was an arrest warrant for failure of the 1<sup>st</sup> respondent to sent the infant to school, there is a pendency of criminal case at the District court at Ilala - Kinyerezi against 1<sup>st</sup> respondent which the District Court took cognisance, the district court also took cognisance on the issue of abandonment of the child, and social welfare report was not accounted in line with transparent conduct of the respondents during the hearing of the case.

It is a trite law that the document which starts the appeal should be filed within thirty days from the day of deliverance of the ruling but the

applicants failed due to the reasons that, she tried to seek for legal assistance in pursuing the appeal until she approaches Peter Kibatata who gave her audience and accepted to assist the applicant and hence this application. It was further stated that, this matter has peculiar nature which needs different attention for what the applicant is seeking, in this kind of application it is apparent truth that each case is to be looked and considered on its own facts, merit and circumstances before arriving to a decision whether or not sufficient cause has been shown and cited the case of **Damari Watson Bijinja v Innocent Sangano as reported in the case in the case of Misc. Civil Application No. 30 of 2021, Hc at Kigoma (unreported) page 6.**

Lastly the counsel stated that the court should look on the reasons set out by the applicants and nature of the matter, the allegation of illegality, good causes set out in the application and there is nothing commercial rather than the welfare of the child which the applicant believes it is at risk if the respondent will proceed to have the right of custody of the mentioned child and cited the case of **Laurent Simon Assenga v John Joseph Magoso & 2 Others, Civil Application No. 50 of 2016, CAT at Dar es Salaam**

This is an *ex parte* ruling after the respondent's failure to enter appearance to the court. As a matter of general principle that whether to grant or refuse an application for the extension of time is entirely in the discretion of the Court. But that discretion is judicial and so it must be exercised according to the rules of reason and justice.

The case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)**.

Formulated the guidelines for the court to follow when dealing with the issues of the extension of time.

In that case, the court reiterated the following guidelines for the grant of extension of time: -

*"(a) The applicant must account for all the period of delay.*

*(b) The delay should not be inordinate.*

*(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*

*(d) If the court feels that there other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

The above assertion has been reflected in various cases which I find no need to mention. The applicant in the instant case through counsel kibatala stated the reasons for delay to be seeking for the legal assistance. The ruling was delivered on **10/3/2021** and this application was lodge on **27/8/2021** it obvious out of time, taking notice on the chamber summons of the trial court herein marked as **TAL-1** shows it was drawn by **Grace Daffa (advocate)** from **Women's Legal Aid**

**Centre (WLAC)** it is enough evidence that even at the hearing of the matter she was assisted. The court is vested with the duty to consider first the best interest of the child in deciding custody. In the interest of justice, I think it is prudent to grant extension of time to allow lodging the appeal as the appellant has shown good cause that she was seeking representation which could not be gotten in time. And since it is through the intended appeal the issues touching the interest of the child will be discussed, denying extension of time will put to an end these efforts leaving the interest of the concerned child at stake, if at all.

I therefore, allow this application and the applicant has to file her appeal within 14 days from the date of this ruling. No order as to costs due to the nature of the application and the fact that the applicant is under legal aid representation.

It is so ordered.



A handwritten signature in blue ink, appearing to read "M. P. Opiyo", is written above a horizontal line.

**M. P. OPIYO,  
JUDGE**

**19/09/2022**