

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 63 OF 2022

(C/F The High Court of the United Republic of Tanzania Misc. Application No. 86 of 2019, The District Court of Arusha at Arusha Civil Appeal No. 9 of 2017, Originated from Arusha Urban primary court at arusha Matrimonial Cause No. 26 of 2016)

TAUSI RAMADHANI..... APPLICANT

VERSUS

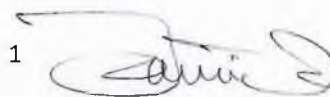
JUMA ABDALLAH.....RESPONDENT

RULING

01st August & 16th September 2022

TIGANGA, J.

This is an application for extension of time to apply for leave to appeal to the Court of Appeal of Tanzania to challenge the decision of this court which denied the applicant the order for extension of time which was made and delivered by Hon. Masara J vide Miscellaneous Civil Application No. 86 of 2019, on 21st February, 2020 for failure of the applicant to show good cause. The applicant, Tausi Ramadhani was aggrieved by that ruling, she decided to challenge the same before the Court of Appeal of Tanzania before she realised that she was out of



time. This application was preferred through the chamber summons supported by an affidavit sworn by the applicant herself.

In the chamber summons, the applicant prayed from the court the following reliefs: **One** that, this Court be pleased to extend time to file an application for leave to appeal to the Court of Appeal of Tanzania against the ruling and order of the High Court in Misc. Civil Application No. 86 of 2019. **Two** that, this court be pleased to grant costs of this application.

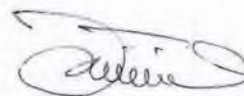
The background of this application as can be deciphered from the record albeit briefly is that, parties were husband and wife before their marriage was dissolved by the Arusha Urban Primary Court in Matrimonial Cause No. 26 of 2016. Following such dissolution of marriage, subsequent orders were also issued including division of matrimonial properties, one of the property divided was the house located at Ngaramtoni ya chini in Arusha which was found to be a matrimonial asset jointly acquired by parties, and it was divided 50% between the parties.

The applicant was aggrieved by the decision and decree of the trial court. She vide Civil Appeal No. 09 of 2017 unsuccessfully appealed to the District Court of Arusha challenging the said decision and orders.

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She was aggrieved by the decision of the District Court. However, before deciding to challenge it, she found webbed in the trap of time limitation. As the matter of law and procedure, she was enjoined to file the application for enlargement of time in order to file revision out of time upon adducing sound, reasonable and good cause. She did so by filing Misc. Civil Application No. 86 of 2019 in this Court seeking for extension of time to challenge the decision of the District Court of Arusha. Very unfortunate to her, the Court was not satisfied by the reasons adduced by the applicant. Therefore, the application was dismissed for want of merits.

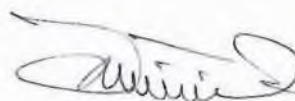
After delivery of that ruling, the applicant did not sleep on her rights, she filed another application in this Court praying for certification on points of law vide application No. 22 of 2020 so that she can have the gate pass to the Court of Appeal of Tanzania. Bad luck, the application was struck out for being hopeless. Again, the applicant returned to this Court with Misc. Civil Application No. 74 of 2021 seeking for extension of time for leave to appeal to the Court of Appeal of Tanzania against the ruling and decree of this Court vide application No. 86 of 2019. That application was withdrawn by Mr. Maeda after conceding to the preliminary objection on the point of law raised by Ms.



Mariam, the counsel for the respondent. It was withdrawn with leave to refile, hence this application.

The application was contested by the respondent through his duly sworn counter affidavit in which he disputed all the facts upon which the application is based. With the leave of the Court, the application was argued by way of written submissions. The applicant was represented by Mr. Elibariki Happy Maeda, Learned Advocate whereas the respondent enjoyed the legal service of Mariam Jackson Nitume also learned Advocate. They all adopted their respective affidavits to form part of their submissions.

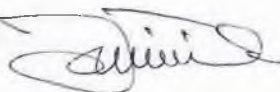
The grounds enshrined in both the affidavit and submissions of the applicant can be summarized into two. **One**, technical delay even though not clearly highlighted by Mr. Maeda, and **Two**, illegality. As earlier on pointed out all those grounds were opposed by the respondent in his counter affidavit and reply submission, to be of no good cause to instigate the discretion of this court to grant the application sought. On the ground of technical delay Mr. Maeda's reasoning obviously, is centred on the filing, striking out and withdrawing of the above seen applications at different levels and time.

A handwritten signature in dark ink, appearing to be 'M. Maeda', is written over the page number.

On the issue of illegality, Mr. Maeda's submission is hinged on section 114(1) and (2) of the Law of Marriage Act, [Cap. 29 R.E 2019] and the case of **Mariam Suleiman versus Suleiman Ahmed**, Civil Appeal No. 27 of 2010, HC at DSM (unreported) which held that, the court can divide matrimonial assets when there is sufficient evidence identifying how the said assets were jointly required during matrimonial ring. That the parties were not given an opportunity to establish where, how and when the matrimonial assets were required before ordering the division of 50% to each party.

Ms. Marriam, counteracted the arguments made by Mr. Maeda. She refuted all the alleged good cause for warranting extension of time. On the ground of technical delay, she argued that, it was the negligence of the applicant to chase for the days of appeal, as the applicant in most time than often was represented by Advocates.

On the ground of illegality Ms. Mariam, contended that, the decision of the trial court was legal since both parties had chances to reveal on the issue of matrimonial property and section 114(1) of the law of marriage (supra) was complied with. Also, that, Mr. Maeda is raising the new fact which was neither pleaded in the trial court nor in this application which is the acquirement of the matrimonial property

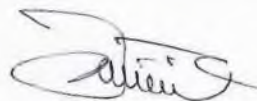
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and thus, it is an afterthought. Lastly, Ms. Mariam asked this court to throw away this application for being in devoid of merits.

In rejoinder, Mr. Maeda reiterated the position on submission in chief by stressing on the ground of illegality as substantiated in his argument and good cause to warrant extension of time as sought.

That marked a summary of the application, as well as the submissions made in support and against it. That done. I have taken into consideration all of the submissions and affidavits from both parties. From them, I think, the issue calling attention of this court for determination is whether, this application is maintainable in law.

For easy and sequential flow of the argument of this ruling, I will start with the point of illegality. It is trite law and a settled principle in our judicial jurisprudence that, illegality is one of the ground for extension of time. Now, for that ground to have merit in applications for extension of time, it must be apparent on the face of record. This simply means that, the alleged illegality must be able to be capture without requiring evidence to substantiate it. If it goes to the extent of requiring evidence to be ascertained, then it disqualifies from being termed as illegality in the context of applications for extension of time. This principle was pronounced in the case in the case of **Elias Masija**



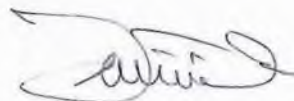
Nyang'oro and 2 Others versus Mwananchi Insurance Company,

Civil Application No. 552/16 of 2019, CAT at DSM (unreported) the court observed:

"With respect, I wish to observe right away that having gone through the record, am not persuaded with the grounds of illegality raised by the applicants. The reason behind being that the claimed illegality is not apparent on the face of record and therefore does not meet the settled threshold".

See also the **Principal Secretary Ministry of Defence and National Service vrs Devram Valambhia** [1991] TLR 387].

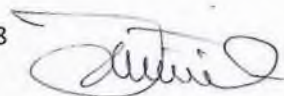
Back to the discussion of the application at hand, it is so clear that, division of matrimonial properties jointly acquired by the parties in matrimonial tie, is substantiated by evidence. Now, whether parties substantially argued it or not is a matter of evidence to be found on record. Thus, this court also need evidence to ascertain that, there was a matrimonial property jointly acquired by the parties and whether the contribution by each party was 50% per each as it was held by the trial court. In the event therefore, it falls short of quality of being illegality which is apparent on the face of record. Moreover, just by way of passing, looking at the point raised, it is not certain as to whether, the



illegality to be relied upon by the applicant is that of the trial court's decision say, Matrimonial Cause No. 26 of 2016 or that of this Court in Misc. Civil Application No. 86 of 2019, the ruling which is impugned in this application. Since I have concluded the ground in negative, I will not venture into this mystery as it was not raised by either party in this application to the extent of calling my attention for determination.

Now, regarding the second ground, that is technical delay, as phenomenon itself hints, the days to be counted for delay should start from when the decision of this Court in the Misc. Civil Application No. 86 of 2019 was delivered. The days within which the applicant was supposed to file the application for leave to appeal against the decision of this court in accordance with the Law of Limitation Act, [Cap. 89 R.E 2019] is sixty days as provided under paragraph 21 of the schedule to the Law.

The said ruling was delivered on 21st February, 2020. Where after the applicant filed the application as procedurally required to challenge the same which were for one reasons or another were either struck out or withdrawn. It is evident from the record that, since when the application was dismissed, the applicant did not remain idle, she kept pursuing various applications in order to realize her right. The last



application was withdrawn on 18th May, 2022 with leave to refile, consequent of which this application was filed on 25th May, 2022 seven days later after the withdraw. In light of the above follow ups, the applicant cannot be said to have been negligent or sloppy in pursuing her legal right.

Furthermore, in my view, this period is not inordinate to the extent of denying the applicant the prayers she sought. I do not also see under what circumstance the respondent will be prejudiced by the order of granting this application under discretionary power of the court.

For the foregoing reasons therefore, I hereby grant the application. The time for filing an application for leave to appeal to the Court of Appeal is enlarged for 21 days from the date of this ruling. Taking into account the nature of the dispute which is matrimonial, I order no costs.

It is ordered accordingly.

DATED at ARUSHA, this 16th day of September, 2022.




J. C. TIGANGA

JUDGE.