

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TEMEKE SUB - REGISTRY  
(ONE STOP JUDICIAL CENTRE)  
AT TEMEKE**

**CIVIL APPEAL NO 32 OF 2022**

*(Appeal from the decision of District Court of Temeke at One Stop Judicial Centre in Misc.Civil Application Cause No. 2 of 2022 delivered by Hon. Jacob, RM on 9<sup>th</sup> May, 2022 and originated from Probate Matrimonial Cause No. 169 of 2021 of Ukonga Primary Court)*

**JOYCE EMMANUEL MZALIA..... APPELLANT**

**VERSUS**

**DEONIS SYLVANUS KOMBA..... RESPONDENT**

**JUDGMENT**

19<sup>th</sup> September & 3<sup>rd</sup> October, 2022

**A.P.KILIMI, J.:**

The appellant filed an application at the District court of Temeke by way of chamber summons under section 20(4)(a) of the Magistrate Court Act Cap. 11 R.E.2019 and rule 3 of the Civil Procedure (Appeals in Proceeding originating in Primary Courts) Rules. Seeking the order for extension of time in order to file her appeal. She also supported her prayer by an affidavit

stating the reasons of delay to file an affidavit, the same was replied by counter affidavit from the respondent. After the hearing of this application by way of written submission, on 9<sup>th</sup> May 2022, The District Court ruled by dismissing the application for failure on part of the appellant to account for each day of delay.

Aggrieved by this Ruling of the District Court, she has appealed to this court basing on one ground that the District Court erred in law and fact for dismissing her application for extension of time to file an appeal out of time. The respondent vehemently rejected this application in his reply to memorandum of appeal stating that the court rejected it judiciously.

During the hearing of this appeal, the appellant was unrepresented and stated that, she could not file the appeal in time because first she filed an appeal at Kinyerezi District Court where she was told that the court has no jurisdiction, then she went to seek for legal aid at WLAC (Women's Legal Aid Centre) a legal aid institution in order to secure another document initiating her application at Temeke District Court , thereat she was directed to one lawyer whom she mentioned by one name Abia.

She further submitted that Abia was absent due to emergence and she came back and wrote for her, by then the time was already expired that is

why she applied first for extension of time. She also said she is doing so because of the trial court decision, which she want to appeal to, she further said that decision did not act fairly in distributing matrimonial properties after the marriage with the responded concluded by the court.

In reply, the respondent submitted that, the appellant failed to raise strong evidence to substantiate her prayer at the said court, he further said that the appellant's laziness caused her delay, therefore this appeal be dismissed.

I have considered these submissions from both parties, ground of appeal and the entire record revealing what transpired at the subordinate court. Only one issue appears conveniently to me to dispose this appeal and this is whether the appellant has sufficient reasons to be granted an extension of time to file appeal.

I am mindful that, it is trite law that, a person applying for extension of time has to exhibit good cause for delay. In this regard I wish to refer the celebrated case of **Benedict Mumello V. Bank of Tanzania** [2006] 227 E. A. L. R. Vol 1 where the Court of Appeal held that: -

*"It is trite law that an application for extension of time is entirely in the discretion of the court*

*to grant or refuse it, and the extension of time may only be granted where it has been sufficiently established that delay was sufficient cause"*

What is a good or sufficient cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case.

The Court of Appeal reiterated its stance in **Oswald Masatu Mwizarabu V. Tanzania Fish Processors Ltd** Civil. Appl. No. 13 of 2010 (CAT Unreported) in that case the Court stated that-

*"The term good cause is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."*

In the case at hand, the appellant at the lower court maintained that, she attended at first the wrong court where her case was dismissed for want of jurisdiction, as she did in filing the application at the next court which this appeal accrue, she then needed to consult lawyer. Unlucky enough this second time she missed her lawyer for a couple of days. In my view the

mistake made earlier of filing a case to a wrong Court cannot be a shield to her.

In the case of **Yusufu Same and Another V. Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT (unreported) where it was stated that: -

*"General speaking, an error made by an advocate through negligence or lack of due diligence is not sufficient cause for extension time. This has been held in numerous decisions of the Court and similar jurisdiction----- **but there are times depending on surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicants advocate.**"*

(Emphasize supplied)

The circumstances expose she sought again for legal aid; prudence dictates that she could have find another legal aid providers instead of relying in one person. Nonetheless even for that depended lawyer no evidence through affidavit adduced at the lower court that she was not reachable at all days of delay so that to account for each day of delay.

In fact, as correctly contended by Ruling of the lower court, the law commands that, an applicant in matters of this nature, must account for each day of delay: (see the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Application No. 138 of 2016, CAT at Dar esSalaam (unreported) which followed **Bushfire Hassan v. Latina Lucia Msanya**, Civil Application No. 3 of 2001 (unreported).

In this appeal she said that the Primary court did not exercise judicially in division of matrimonial properties, the appellant did not go further to explain to this court and the lower court on whether there was a point of illegality.

Also see **The Principal Secretary Ministry of Defense and National Service V. Devran Valambia [1992] T. L. R 387**, and **VIP Engineering and Marketing Ltd, Tanzania Authority and the liquidator of Tri - Telecommunication v. Citi bank Tanzania Ltd** Consolidated References No. 6, 7 and 8 of 2006(unreported). the Court of Appeal held that-

*"Where the point of law at issue is the illegality or otherwise of the decision being challenged, that is a point of the sufficient importance to constitute sufficient reasons".*

In her affidavit filed at the District court, the appellant avers that the trial court failed to distribute the matrimonial properties despite deciding that they were jointly acquired. When you see this averment plainly you can see illegality, but this is not what transpired at the trial court, according to the Trial Court Judgment at page 5, the court in its original language contended that;

*"Mahakama hii imeona nyumba hizo mbili zimepatikana katika kipindi ambacho wadaawa wamekuwa wakiishi pamoja, hivyo mahakama hii kwa busara zake **inagawanya nyumba hizo kama ifuatavyo; nyumba hizo ziiizopatikana katika kiwanja kimoja ambayo moja mdaiwa aiiikuta na hiyo nyingine iliyopo katika linta ni mali ya mdai na hiyo ambayo mdaiwa anaishi kwa sasa ni maii yake mdaiwa"***

(Emphasize supplied)

In my view above and after reading the entire court record, no point of illegality at the trial court triggered me to be taken as reason to substantiate her application.

Relying the reasons adduced above, I hereby answer the issue regarding the merits of this appeal negatively to the effect that, the appellant has failed

to adduce sufficient reasons for the court to grant her extension of time sought. Therefore, appellant cannot therefore, be said to have been diligent in pursuing her prayer.

In view thereof, it therefore my opinion, that there is no basis for faulting the findings of District Court. This Appeal is hereby dismissed. However, given the nature of the dispute, I order each party to bear own costs.

It is so ordered.

DATED at DAR ES SALAAM this 3<sup>rd</sup> day of October, 2022.



  
A.P.KILIMI

JUDGE

3/10/2022

**Court:** Judgment delivered in chambers in the presence of both appellant and respondent. Right of Appeal dully explained to them.

**Sgd:A.P.KILIMI**

**JUDGE**

**3/10/2022**