

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVIL APPLICATION NO. 09 OF 2022

(Arising from Matrimonial Appeal No. 07 of 2021 Kigoma District Court, original
Matrimonial Appeal No. 02 of 2020 at Mwandiga Primary Court)

THOMAS MAGENGE.....APPLICANT

VERSUS

ZAITUNI AHMAD..... RESPONDENT

RULING

30th Sept. & 28th October, 2022

MANYANDA, J.

The applicant is seeking extension of time to appeal against a decision of the District Court in Matrimonial Appeal No. 07 of 2022. When the application was tabled before me for hearing, the Applicant was present in person and represented by Mr. Michael Mwangati, learned Advocate whereas the respondent was as well present in person and represented by Mr. Daniel Rumenyela, learned Advocate.

The application is made by way of a chamber summons supported by an affidavit sworn by Michael Mwangati, the applicant's counsel. The pleadings and records of this matter indicate that the Applicant was the Appellant in matrimonial Appeal No. 07 of 2021 before Kigoma District Court and that the same was decided on 19/07/2021 in the Respondent's favour.

Dissatisfied, the Applicant wants to knock the door of this court.

Unfortunately, he has found himself out of time hence this application.

Mr. Mwangati, the counsel for the Applicant, submitted that, the Applicant is praying for extension of time to appeal out of time in respect of Matrimonial Appeal No. 07 of 2021 of Kigoma District Court originating from Matrimonial Cause No. 02 of 2020 of Mwandiga Primary Court.

He submitted further that, the matrimonial appeal was delivered on 19/07/2021, and immediately, the Applicant was given the copies of judgment and Decree in time but unfortunately, on 20/07/2021 he got involved in an accident where he was treated at Kasulu hospital, later on he was referred to Bugando Referral Hospital in Mwanza for treatment on his back born discs and when he returned, he found himself out of time to appeal.

The counsel maintains that, the applicant is praying for extension of time because the delay was out of his control. The accident caused

injuries, pain, travelling out of Kigoma and financial constraint and that if the time is extended that the respondent will not be prejudiced. He prayed the application to be granted with costs.

Arguing on the part of the respondent, Mr. Daniel Rumenyela, learned advocate, submitted by adopting his affidavit that they dispute the application because the ground given is not true. He argues that, the contention of been involved in an accident and hospitalised at Kasulu and then at Bugando is not true.

Mr. Rumenyela submitted further that the judgment was delivered on 19/7/2021 but it is not clear that on 20/7/2021 the Applicant was given the copy and the next day got involved in an accident, that, such coincidence is not possible.

Rumenyela went on submitting that, the counsel for the Applicant argued in variance with the affidavit because the counsel says the accident was caused by a "motor bike" while the affidavit says it was caused by a "motorcycle". A "motor bike" is not the same as a "motor cycle." A "motor bike" is not motorized while a "motorcycle" is motorized. Even the medical chit mentions a "motor bike" not "motorcycle".

Mr. Rumenyela submitted further that, it is the Respondent's averment that the Applicant was being seen in the village and was in good health all the time.



Moreover, Rumenyela argues that the parties are at execution stage of matrimonial division at Mwandiga. Also, there is no evidence that the Applicant went for treatment at Bugando Hospital because the documents attached to the affidavit, apart from been uncertified photocopies, do not show that he was hospitalized at Bugando.

Again, the respondent's counsel went on submitting that, the respondent has no means of maintaining her life after been divorced in court and the applicant is playing a dilly-dallying game.

On the question of costs, Mr. Rumenyela argues that, it is unfounded because the respondent has no any hand in the costs which the applicant has caused. He finally submitted that, the application has not established any good cause for extension of time as described by the law. He prays for the application to be dismissed with costs.

Re-joining his submission in chief, Mr. Mwangati insisted that, the cause of delay is sickness which is supported with documentary exhibits. That, this ground is not lie, the applicant could never be seen at his village in Kasulu and at Bugando Hospital in Mwanza at the same time. That the words "motor bike" and "motorcycle" have been wrongly interpreted by the respondent's counsel, a "motor bike" has pedals and a "motorcycle" has no pedals. The accident of the applicant involved a motor bike.


Mwangati finally insisted that, there is no irreparable loss she can suffer if the application is granted. He therefore insisted that the application be granted.

Those were submission by the counsels for both sides. I am thankful to both of them for they discharged their part with the same zeal and eloquent learned minds.

I am, in the first place, in agreement with the counsel for both sides on the position of law in matters of extension of time. As rightly argued extension of time is in the discretion of the court and such discretion has to be exercised judiciously that means with rules of reason and justice. See the case of **Benedict Mumello versus Bank of Tanzania**, Civil Appeal No. 12 of 2002, at page 6. CAT at Dar Es Salaam, (Unreported)

In order for this court to exercise its discretion, to extend the requested time the Applicant must show sufficient or good cause.

However so far, the term sufficient or good cause has not been defined the same have been taken to cover such issues of need to advance substantial justice when no negligence in action or want of bonafide is imputable on the part of the Applicant. See the case of the **Registered Trustees of the Archdiocese of Dar es Salaam vs Chairman of**



Bunju Village and 11 others, Civil Appeal No. 147 of 2006 (unreported)

where the Court of Appeal stated as follows: -

"It is difficult to attempt to define the meaning of the word "sufficient cause" It is generally accepted however, that the words would receive liberal construction in order to advance substantial justice, when no negligence or inaction or want of bonafides, is imputable to the appellant."

The position expounded in the case above makes this court to find that while an applicant is required to account for delay of each day, there are other conditions to be fulfilled which also may constitute sufficient cause such conditions are as spelt in the case of **Lyamuya Construction Company Limited vs Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No 02 of 2010(unreported) where the court of Appeal stated the four condition as follows:-

"a) The applicant must account for all days of delay

b) The delay should not be inordinate.

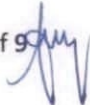
c)The applicant must show diligence not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

d)If the Court feels that there are others reasons such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged"

In this matter the applicant has explained that he acted immediately after delivery of the impugned judgment but he was barred by his involvement in the motor bike accident which led him to be hospitalized as submitted by Mr. Mwangati and the medical chit attached to the pleadings.

A question is whether the Applicant acted immediately after the pronouncement of the judgment in matrimonial Appeal No. 07 of 2021 and whether the Applicant's delay has sufficient or good cause.

The counsel for the Applicant argued that the Applicant did act immediately after the judgment by requesting to be supplied with the requisite judgment and decree of the Appellate court. However, on the next day he got involved in an accident, hence the delay. The counsel for the respondent argued that the contention of been involved in an accident and hospitalised at Kasulu and then at Bugando is not true for what he reasoned that it is not clear that on 20/7/2021 was given the copy and the next day got involved in an accident, he contended that such coincidence is not possible. Mr. Rumenyela also disputed the attached documents which he said that they are uncertified photocopies.



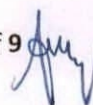
Although he cited no law to support his argument but I find this issue to be fundamental in this matter.

I understand that sickness is a sufficient/good cause upon which the applicant can be granted extension of time. However, in my perusal of the records I found that the copies availed to this court as supportive evidence to prove his application are only referral letters titled "Patient Referral Form" from Kasulu District Council Hospital and Hospital Discharge Certificate."

In fact, the said documents do not show that the Applicant did ever go and was received at Bugando and got admitted therefore treatment.

To my understanding, to have referral form is one thing and to go for the treatment is another thing. Proof of being treated at a certain hospital is by letters of admission or even document indicating that the applicant was admitted and treated at a certain hospital. It was expected that, since the applicant was referred to Bugando by the documents he attached to the affidavit, he could also have tendered admission and treatment documents.

The documents being certified or uncertified has nothing to change the fact that a proof of being hospitalised by admission at a hospital and subsequently discharged are necessary documents.



Having so said I agree with the argument of Mr. Rumenyela, the respondent's counsel, that, the Applicant was been seen in the village in good health all the time. I say so because of the unsatisfactory evidence by the applicant which is unable to establish good cause for his failure to prosecute his appeal due to sickness.

The judgment was delivered on 19/7/2021 but this application was filed on 16/6/2022 which is about 310 days delay, which in law this time is inordinate delay. In the circumstances, I find that the applicant has failed to account for each day of delay.

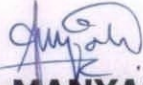
In this case as explained above I am satisfied that the Applicant has failed to establish sufficient cause to enable this court to exercise its discretion powers to grant the time extension sought by him.

Consequently, I do hereby dismiss the application. The Applicant to bear the cost of the case.

Order accordingly.

Dated at Kigoma this 28th Day of October, 2022




F.K. MANYANDA
JUDGE