

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 288 OF 2022**

**ADAM HASSAN KIFILE .....APPLICANT**

**VERSUS**

**FRIDA JUMANNE MAHIMBO.....RESPONDENT**

**(Originating from the decision of the District Court of Kinondoni at  
Kinondoni in Matrimonial Cause No.71 of 2020)**

**RULING**

6<sup>th</sup> October & 20<sup>th</sup> October 2022.

**KISANYA, J.:**

By chamber summons preferred under section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019, the applicant seeks for an order of extension of time to appeal against the decision of the District Court of Kinondoni at Kinondoni (the trial court) in Matrimonial Cause No. 71 of 2020. The application is supported by an affidavit of the applicant. On the other hand, the respondent resisted the application by filing a counter-affidavit.

A brief background facts giving rise to this application as could be gathered from the pleadings is that, the applicant and respondent were husband and wife. The respondent successfully petitioned for a decree of divorce at the District Court of Kinondoni. In addition to the decree of divorce, the trial court granted orders as to division of matrimonial property, custody

of issues of marriage and maintenance of the said issues. As far as division of matrimonial property is concerned, the applicant was ordered to pay the respondent a sum of Tshs.10,000,000/= as her contribution during subsistence of their marriage. On 12<sup>th</sup> November 2021, the applicant lodged a letter requesting for judgment and decree for appeal purposes. Upon failing to appeal within the time prescribed by the law, he lodged this application for extension of time on 8<sup>th</sup> July, 2022.

By consensus of the parties, the hearing proceeded by way of written submissions which were filed by Mr. Godwin Muganyizi, learned advocate for the applicant and Ms. Glory Sandewa, learned advocate for the respondent.

Mr. Muganyizi was the first to take the floor. He submitted that the impugned decision is tainted with illegalities. His submission was based on the contention that, the trial court was satisfied that the respondent did not contribute towards acquisition of matrimonial properties but awarded her Tshs.10,000,000/= in compensation thereof. He further contended that the impugned judgment is tainted with illegalities on the ground love cannot be branded to be a contribution towards acquisition of matrimonial property as held by the trial court.

Mr. Muganyizi further argued that illegality is a sufficient ground for extension of time because it enables the court to cure the alleged illegality. To buttress his argument, he cited the case of **VIP Engineering & Marketing**

**Ltd & 2 Others vs CitiBank Tanzania Ltd**, Civil Reference No.6, 7 and 8 of 2006 (unreported).

In the light of the foregoing submission, the learned counsel asked this court to grant the application for extension of time.

Contesting the application, Ms. Sandewa first adopted the respondent's counter-affidavit. It was her argument that an application of extension of time succeeds when the applicant has demonstrated sufficient cause for delay and accounted for each day of delay. To bolster her argument, Ms. Sandewa cited the cases of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd**, Civil Application No. 33 of 2015 and **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No.192/20 of 2016 (both unreported). Basing on the said principles, the learned counsel contended that the applicant had failed to demonstrate sufficient cause warranting this court to grant the application for extension of time. Her submission was based on the contention that the applicant had not accounted for each day of delay. In view of all this, the respondent's counsel prayed that the application be dismissed for want of merits.

In his brief rejoinder Mr. Muganyizi submitted that the applicant had accounted each day of delay by mentioning that he needed time to raise funds to engage the advocate. He further submitted that the courts have never hesitated to grant extension of time when there is a ground of illegality.

From the rival submissions and cited authorities, the issue before this Court is whether the applicant has advanced good cause warranting it to grant extension of time to file an appeal.

As indicated earlier, this application is preferred under section 14 of the LLA. The enabling provision empowers the court to extend time when there is reasonable or sufficient cause. Reading from the provision of section 14 of the LLA, I am at one with both counsel that, the court is bestowed with a wide discretionary power. Basing on the facts of each case, the court may grant or refuse to grant an application for extension of time. See also the cases of **Alliance Insurance Corporation Ltd** (supra) and **Jubilee Insurance Company (T) Ltd vs Mohamed Sameer Khan**, Civil Application No.439 of 2020 (unreported).

As the law does not define what amount to reasonable or sufficient cause stated in section 14 of the LLA, there are established factors which are considered in determining the application for extension of time. Some of the factors were underlined in see the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported) to include, the length of delay, the reason for the delay, whether the applicant caused or contributed to the delay, whether there is arguable case such as point illegality and whether the adverse party will be prejudiced if the application is granted.

As rightly argued by the respondent's counsel, another settled position is to the effect that the applicant must account for each day of delay. Amongst the authorities on that position is the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, (supra) where it was held that:-

*"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

Being guided by the above principles on extension of time, I have noticed that, the impugned judgment was delivered by the trial court on 28<sup>th</sup> October, 2021. Therefore, in view of section 80(2) of the Law of Marriage Act, Cap 29 R.E. 2019, a period to appeal against the said decision is forty five days. That being the case, the forty five days lapsed on 13<sup>th</sup> December, 2021. However, although the supporting affidavit was sworn on 10<sup>th</sup> June, 2022, the application was filed on 8<sup>th</sup> July, 2022. This implies that the length of delay is of almost seven months. Considering this is a matrimonial case, I am of the view that the length of delay is long.

Next for consideration is the reasons for the delay of the seven months and whether the applicant has accounted for the same. As hinted earlier, Mr Muganyizi urged me to consider that the applicant accounted for the delay when he deposed that he was impoverished to raise the advocate fees. Indeed, that fact was deposed in paragraph 8 of the applicant's affidavit. It is trite law that poverty or lack of money is not a sufficient ground of extending time. I am

fortified by the case of **Nyabise Ekororo Nyamkumwa vs Clevery Etang'are**, Misc. Land Application No. 77 of 2020 (unreported) in which my learned brother Hon. Kahyoza J., cited the case of **Chairman Youth Society vs John Ndayizeye**, Civil Appeal No. 3 of 1998 (CAT unreported) where it was held that:-

*"The law has even gone further to hold that ignorance of law, old age or poverty are not good cause for allowing an application for leave to appeal out of time."*

In view of the above authority, the applicant's contention that he was raising money to engage an advocate is not a sufficient cause for this Court to grant the application for extension of time. Considering further that the applicant did not state as to when he was able to raise the said money, I agree with Ms. Sendewa that the applicant has failed to exercise his duty of accounting for each day of delay. Since the applicant has failed to account for each day of delay, he is considered to have exhibited negligence and apathy as underscored by the Court of Appeal in the case of **Shelina Jahangir & Others vs Nyakutonya N.P.F. Company Limited**, Civil Application No.47/8 of 2020 (unreported) that:-

*"The failure to account for 16 months does not depict sense of diligence on the part of the applicants in pursuing their case as claimed by Mr. Kesaria. To say the least, the omission depicts sloppiness and negligence on their part. The Court has held time and again that negligence or lack of diligence*

*constitutes no sufficient reason to warrant the grant of an extension of time”.*

Last for consideration is the ground of illegality. According to the supporting affidavit and Mr. Muganyizi’s submission, the applicant intends to challenge the trial court’s decision in holding that the respondent’s love to the applicant amounted to contribution towards matrimonial property. As rightly submitted by Mr. Muganyizi, illegality is a sufficient cause for extension of time. That recourse enables to the court to take an appropriate measure if the illegality is proved or established. Apart from the case of **VIP Engineering & Marketing Ltd & 2 Others (supra)**, this position was stated in the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** (1992) TLR 182, where the Court of Appeal held as hereunder: -

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and there cord straight."*

That notwithstanding, the law is further settled that for the point of illegality to stand as a ground for extension of time, the alleged illegality must exit and be noticeable on the face of the record without calling long argument to discover the same. I hold so basing on the decision of the Court of Appeal in

the case of **Moto Matiko Mabanga vs Ophir PLC and 2 Others**, Civil Application No. 463/01 of 2017 (unreported) where it was restated: -

*"...for the ground of illegality to stand, the challenged illegality of the decision must be clearly be visible on face of record, and the illegality in focus must be of sufficient importance."*

In another case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No.10 of 2015 (unreported), one single Justice of Appeal underlined as follows:-

*"I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. Certainly, it will take a long drawn process to decipher from the impugned decision the alleged misdirection or non directions on points of law".*

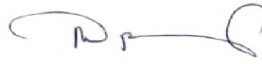
Applying the stated position of law in the instant application, I find no illegality raised by the applicant. Mr. Mganyizi did not demonstrate how the trial court's findings that the respondent's love to the applicant amounted to illegality. In my considered view the illegality in question does not raise a point of law that is apparent on the face of the record and that, a long process will be involved to discover the same. For instance, one may argue that respondent's love to the applicant included, among others, domestic works which is considered as sufficient contribution towards acquisition of matrimonial property.



From the foregoing reasons, the applicant failed to demonstrate any reasonable or sufficient cause to warrant this court to exercise its judicial discretion of extending time.

In the upshot, this application for extension of time is without merit and has to fail. It is accordingly, dismissed with no order as to costs due its nature.

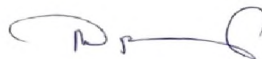
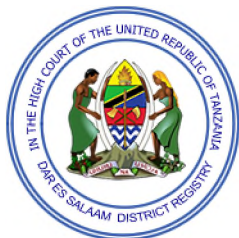
**DATED** at **DAR ES SALAAM** this 20<sup>th</sup> day of October, 2022.



S.E. KISANYA  
**JUDGE**

**Court:** Ruling delivered this 20<sup>th</sup> day of October, 2022 in the presence of the applicant and respondent.

Right of appeal explained.



S.E. KISANYA  
**JUDGE**  
20/10/2022