

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO

MISC. CIVIL APPLICATION NO. 30 OF 2022

*(Originating from Matrimonial Case No. 17 of 2021 in Ilonga Primary Court and Civil
Revision No. 1 of 2022 at the District Court of Ulanga)*

KASIMU SIMBALYOTO..... APPLICANT

VERSUS

REHEMA TAMBIKO RESPONDENT

RULING

*Hearing date on: 24/10/2022
Ruling date on: 31/10/2022*

NGWEMBE, J.

This is an application for extension of time proceeded ex parte because the respondent refused services. The court process server took oath on refusal of the respondent to accept summons as effected to her on 30th August, 2022. Following that denial of summons, this court had no alternative than to proceed with hearing ex parte.


Despite the fact that, this court lacked advantage to hear the version from the respondent, yet the applicant still has a duty to perform before this court invokes its discretionary powers to grant extension of time or otherwise.



The applicant moved this court by rightly citing section 14 (1) of the Law of Limitation Act Cap 89 R.E. 2019, same is supported by the affidavit of the applicant. The contents of the affidavit is to the effect that, he was aggrieved with the decision of the 1st appellate court hence intended to appeal to this court. However, in paragraph 4 disclosed that he was prevented by serious Malaria and Pneumonia thus resulted him being admitted to the referral Hospital at Morogoro from 6th June, 2022 to 13th June 2022. Thereafter he attended clinic up to 17/6/2022. Thus he was prevented to actualize his intention by serious malaria and pneumonia.

Proceeded to disclose in paragraph 6 that he was delayed for 17 days which was caused by serious sickness as opposed to negligence. Rested in paragraph 8 by introducing the need of interest of justice to allow him to appeal against the offending judgement of the District Court.

To substantiate his allegations of sickness, he attached a letter written by Dr. Emmanuel D of Morogoro Regional Referral Hospital bearing reference No. DC. 122/175/01G/04 of 22 June, 2022. Though I need not to doubt much as doubting Thomas in Holy Bible, yet such letter alone may not convince my conscious to exercise this court's discretionary powers. The essence is clear that such letter is different from sick sheet known by every hospital. Second, such letter may be written and signed by whoever. Such doubt arises due to abuse of professionalism and distrust experienced several times. Though the issue of sickness is usually treated as among matters out of human choice and no one may be blamed.




Fortunately, on the hearing date of this application, the applicant was represented by learned advocate Salma Jafari who expressly relied on sickness of the applicant which prevented him from appealing within time. Further said, the offending judgement was delivered on 11/5/2022 and the applicant had 30 days to appeal against it. However, he fell sick which was not caused by his inaction or negligence.

Further argued that, the decision of the District Court was full of illegality because the respondent failed to file necessary pleadings that is counter affidavit, yet on the hearing date she was allowed to appear and address the court. Rested by referring this court to the case of **Emmanuel R. Maira Vs. The District Executive Director Bunda District Council, Civil Application No. 66 of 2010.**

Considering this application on its merits, I accept that what has been adopted by the applicant is proper in law. Being caught in time limitation, he is correct to apply for extension of time for his contemplated pursuit.

On the basic premise, I agree with the applicant's advocate that this court is empowered to extend time to appeal before this court under section 14 (1) of **The Law of Limitation Act.**

Being guided properly, granting extension of time is a discretionary power of this court, however must be exercised judiciously. **Black's Law Dictionary (8th Edition)**, attributed the discretionary powers of the court judiciously to mean "*Well considered, discreet, wisely and circumspect*" Correlating with the Court of Appeal, in **UAP Insurance Tanzania Ltd Vs. Noble Motors Limited [2017] T.L.R. 583** and **Karibu Textiles Mills Ltd Vs. Commissioner General (TRA), Civil**



Application No. 192 of 2016, construed that '*judicious exercise*' of powers by the court is to make a decision with a sense of justice by judging the material before it having regard to the particular circumstances of each case.

The long unfettered standing position of the law relevant herein is that, in order for a party to be granted an extension of time to exercise any right which he failed to exercise it within time as prescribed by law, must adduce sufficient ground and reasonable cause. Reasonable ground or sufficient cause cannot and should not be universally interpreted, but the rule is, each case be taken on its own facts. Reference is made to **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** where it was held:-

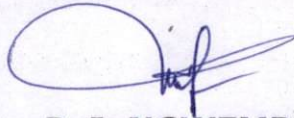
- (a) The applicant must account for all the period of delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

In respect to this application, when considered deeply with the reasons of sickness as rightly advanced by the applicant, it is evident sickness provide good cause for delay. Thus, entitles the applicant to the order sought for, as was decided by the Court of Appeal in the case of **Emmanuel R. Maira (Supra)**.

Having so said and for the reasons so stated I proceed to grant extension of time as prayed. The applicant may actualize his intension within twenty (20) days from the date of this ruling.

Order accordingly.

Dated at Morogoro in chamber this 31st day of October, 2022.

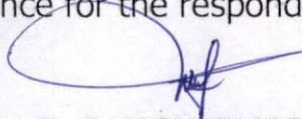


P. J. NGWEMBE

JUDGE

31/10/2022

Court: Ruling delivered at Morogoro in Chambers on this 31st day of October, 2022 in the presence of Salma Jafari, Advocate for the Applicant and in the absence for the respondent.



P. J. NGWEMBE

JUDGE

31/10/2022