

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION No. 65 OF 2021**

*(Arising from PC Civil Appeal No. 97 of 2019 at the High court of Dar es Salaam*

*delivered by Hon Mlyambina J)*

**ALLY SAID MZIMBA .....APPEALLANT**

**VERSUS**

**MWAJABU STAMILI ..... RESPONDENT**

Last Order: 13/06/2022

Ruling date: 15/08/2022

**R U L I N G**

**MANGO, J**

The Applicant Ally Said Mzimba filed this Application seeking for the following orders.

- (i) That the Hon Court be pleased to grant extension of time to file notice of Appeal.
- (ii) Any other reliefs that the court may deem fit and just to grant

The Application is made by way of a Chamber summons supported by an affidavit sworn by the Applicant. The Respondent contests the grant of the orders sought in this application and he filed a counter affidavit to that effect.

On 21/04/2022, the court ordered the Application be argued by way of written submissions.

The Applicant was represented by Geoffrey Luyanji, learned advocate while the Respondent was represented by HappyPhania E. Luena learned advocate.

In his submission the Applicants counsel submitted on two grounds for the delay as contained in the Applicants affidavit.

He submitted that the Applicant's delay to file the appeal was due to the Applicants sickness. According to him, the Applicant fall sick on 18<sup>th</sup> January 2021 and he was unable to pursue the appeal within the prescribed time limit. He referred the Court to the medical records of the Applicant which are attached as annexure APP4 to his affidavit. The learned counsel argued that sickness is a good reason that can move the Court to grant extension of time. To buttress his submission, he cited the case of **Emmanuel R. Maira Versus The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010, Court of Appeal of Tanzania at Dar es salaam in which the Court of Appeal considered

diligence in making follow up for a copy of judgement and decree and sickness to be good reasons for extension of time.

In his reply submission, the Respondent's counsel disputed the Applicant's sickness. She specifically questioned the genuineness of the medical record attached to the Applicant's affidavit because the maker of the record did not swear an affidavit to verify the contents of the medical records. She is of the view that, the medical records were merely fabricated by the Applicant. The Respondent had no rejoinder

I have considered submissions by both parties and court record and I hereby grant the application on the ground of sickness. Sickness of the Applicant was merely disputed by way of suspicions that perhaps, the Applicant was not sick and the medical record were fabricated. It is well settled that, suspicions however grave cannot be relied upon as a proof of a suspected issue. The Respondents has not availed the Court with any evidence that contradicts the Applicant's sickness.

In such circumstances I do not have any reason to doubt the Applicants sickness which has been averred in a properly sworn affidavit and backed up with medical records of the Applicant. The medical record indicates that Applicants was sick from 12<sup>th</sup> January 2021 to 6<sup>th</sup> February 2021. On 15<sup>th</sup> February 2021 the Applicant filed the appeal at hand seeking for extension of time to file a notice of appeal.

Sickness is a good ground for extension of time as it has been held in a number of cases. I also consider sickness in this application to be a sufficient ground to extend time for the Applicant to pursue the remedies sought.

The Applicant should file his notice of appeal and file his application for leave to appeal within 30 days from the date of extraction of the drawn order from this ruling. Given the fact that this matter originates from a matrimonial case and there is no evidence regarding the Respondent's capacity to pay costs, I do not award costs.

Dated at Dar es salaam this 15<sup>th</sup> day of August 2022



**Z. D. MANGO**  
**JUDGE**