

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 55 OF 2021

*(C/F Civil Appeal No. 39 of 2020 in the District Court of Arumeru at Arumeru
originating from Matrimonial cause No 07 of 2020 in Emaoi Primary Court)*

REMMY KEIYA MSUYAAPPLICANT

VERSUS

GLADNESS JANSONRESPONDENT

RULING

09/11/2021 & 15/02/2022

KAMUZORA, J.

Remmy Keiya Msuya, the Applicant herein preferred an application for extension of time before this court for him to appeal against the decision of the District Court of Arumeru in Civil Appeal No 39/2020 that was delivered on 27/04/2021. The application was brought under section 25(1)(b) of the Magistrates Courts Act Cap 11 R.E 2019 and supported by an affidavit sworn by the Applicant himself. The Respondent opposed the application through a counter affidavit deposed by the Respondent herself.

When the matter was called for hearing, the Applicant was represented by Mr. Ismail Shalua while the Respondent enjoyed the

service of Ms. Ekael Michael. The hearing of the application was by oral submissions.

Before delving into the merit of the application, it is imperative that in brief I give the background of the matter. The Applicant successfully petitioned for a decree of divorce against the Respondent in Matrimonial Cause No. 07/2020 before Emaoi Primary Court. Being aggrieved, the Respondent lodged an appeal to the district court of Arumeru which quashed and set aside the proceedings and decision issued by the trial court for failure to abide with section 101 of the Law of Marriage Act Cap. 26 R. E 2019 as the parties did not refer the matter to the marriage reconciliatory board prior to the petition for divorce. In an attempt to challenge the said judgment, the Applicant found himself time barred hence this application for enlargement of time.

The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay.

Submitting on the substance of the application Mr. Shalua argued that, the impugned judgement was delivered on 27/04/2021 and the Applicant being aggrieved on the same day requested to be supplied with copies of judgment and decree from the registry which required him to come back after a week. That, the Applicant is working with the Tanzania

Defence Force stationed at RTS Kishangaiko in Pwani region and had to travel to Arusha in various occasions to make follow up of the said documents and that on 29th June, 2021 while making follow up he was supplied with copies of judgment certified on 11th May 2021 and at that time the statutory time to lodge an appeal had already lapsed.

Mr. Shaula further submitted that, from the date the judgment was delivered, the time to appeal expired on 27/05/2021 hence counting from the date the impugned judgment was issued to the date of filling the application there was a delay of 50 days due to the traveling problem encountered by the Applicant while traveling from Pwani to Arusha.

Referring paragraph 4 of the respondent's counter affidavit which reveals that the Applicant was in Arusha pursuing claim for custody through social welfare officer and through a case filed before Enaboishu Primary court instead of appealing on time, the counsel for the Applicant submitted that, the Applicant had a right to make a complaint over custody of his children and to pursue the appeal. He supported his submission with the case of **Republic vs. Yona Kaponda (1985) TLR 85**.

The Applicant's counsel urged this court to regard the reasons deponed in the affidavit and find that they are sufficient reasons for the

delay in filling the appeal. He supported his submission with the case of **Philemon Mangehe t/a Bukene traders Vs Gesbo Hebron Bajuta**, Civil Application No 08 of 2016 CAT (Unreported).

Contesting the application Ms. Ekael submitted for the Respondent submitted that, there is a delay of 66 days counting from the day the decision was made that is, from 27/05/2021 to the date the application was filed before this court that is, 16/07/2021. She submitted that, no good reasons have been adduced for the delay as the Applicant was in Arusha and instead of filling an appeal, he was claiming custody of the children. The counsel referred this court to the attached summons in the counter affidavit and supported her submission with the case of **Finca Ltd and Kihondogoro Action Mart Vs Boniface Mwalukisa**, Civil Appeal No. 589 of 2018 CAT at Iringa (Unreported) which stated that a delay of even a single day has to be accounted for. She insisted that, as the Applicant has failed to account for each day of the delay then the application be dismissed with costs.

Upon a brief rejoinder by Mr. Shalua reiterated his submission in chief and stated that, the Applicant was supplied with copies while the statutory time had already lapsed and that the Applicant has instituted the two cases while the statutory time to appeal had already lapsed. He

insisted that, as the Applicant was in Arusha to make follow up, he has shown good cause for the delay.

I have gone through the records and the submission by the counsel for the parties. As prior pointed out the pertinent issue calling for the determination of this court is whether the Applicant has adduced sufficient reason for the delay.

The grant of extension of time is a matter of discretion of the court, the discretion which however, must be exercised judiciously. Moreover, the Applicant has to account for every day of the delay: see for example, the unreported decision of the Court of Appeal in **Bushiri Hassan v. Latifa Mashayo, Civil Application No.2 of 2007**.

The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (Unreported). The court held that: -

"On the authorities however, the following guidelines may be formulated:

- a) The Applicant must account for all the period 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; and*
- d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged”*

This application was brought under the provision of section 25(1)(b) of the Magistrates' Courts Act Cap 11 R.E 2019 which read: -

*25 (1) (b) in any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, **within thirty days** after the date of the decision or order, appeal there from to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.*

The above provision prescribes time limit for appeal to be thirty days and it mandate the court to grant enlargement of time for lodging of an appeal before or after expiration of time limit. However, the court in exercising its discretion in granting or not granting the extension it has to consider the guidelines set by the Court of Appeal in the case of **Lyamuya construction** (supra) by showing that the delay was not inordinate, the Applicant did not act negligently or in apathy or sloppiness and the applicant accounted for each day of delay.

In the present application the records show that, the judgment of the district court was pronounced on 27/04/2021 and the copies of the same were certified on 11/05/2021. The present application was filed in court on 16/7/2021 as per exchequer receipt No. EC1009766007941P. The Applicant claimed that he was supplied with certified copy of the judgment on 29/06/2021 when the time to appeal was already lapsed thus the present application.

Section 19 (2) of the Law of Limitation Act Cap 89 R. E 2019 clearly provides that: -

"In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."

Also, in the case of, **Alex Senkoro and 3 others vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT(Uunreported) it was held that,

"We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of

the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time."

In considering the law and basing on the above authority, the time spent in obtaining copies of judgment are automatically excluded in computing time to appeal. In other words, the computation of appeal period starts after obtaining a copy of decree or judgment. The Applicant claimed that, he obtained the copy of judgment on 29/06/2021 the fact that was contested by the Respondent on account that the copies were supplied to both parties on the date they were certified by the court meaning, on 11/05/2021. The Applicant claims that, he is working with the Tanzania Peoples Defence Force (TPDF) and stationed at RTS Kishangaiko located in Pwani Region. That, he had to travel most of the time to make follow up of the documents and when he was supplied with copies on 29/06/2021 he discovered that the same were certified on 11/05/2021. That was again contested by the Respondent who brought in court a copy of summons showing that at all time the decision was made and copies certified, the Applicant was in Arusha pursuing another case for custody of children.

In my perusal to the record, apart from deponed fact in the affidavit, I did not encounter any evidence attached to the affidavit proving that

the Applicant travelled to Arusha and made several follow up of the document as alleged. He was also unable to present evidence showing the date he obtained the certified copies of the judgment thus his claim remains a mere assertion.

The Respondent also claim that they were both supplied with copies soon after they were certified. Thus, it is upon the Applicant to prove that the copies were supplied to him on the date he mentioned and not otherwise. In the absence of that proof, this court consider that the time limit in this application starts to run from the date of the certification of the impugned judgment that is 11/05/2021. Counting from that date, the time limit to file his appeal runs up to 09/06/2021 and counting from then until 16/07/2021 when the application was filed before this court, there is a delay of almost 36 days. The Applicant was therefore responsible to account for each day of delay from 09/06/2021 to 16/07/2021.

On the contention by the Applicant that he obtained copies of judgement on 29/06/2021 and filed application of extension of time on 16/07/2021 it is my view that, that is an afterthought. I say so because, if it is true that the copies were obtained on 29/06/2021, it means that, by excluding the time for obtaining copies, the Applicant was still on time thus could have directly preferred an appeal and not an application for

extension of time. The fact that he opted for the application for extension of time proves that he knew that he was genuinely out of time. The Applicant is therefore responsible to prove that he had genuine reason for the delay in filing an appeal. With the submission in record, the applicant has not adduced good reason for the delay by failure to account each day of delay. I also find hard to believe that the Applicant was diligent in prosecuting his claim before this court.

For the reasons stated above I find this application devoid of merit as the Applicant has failed to adduce good reason to warrant this court to exercise its discretion power to grant the order sought. The application is hereby dismissed with no order as to cost considering the nature of relationship between the parties.

DATED at ARUSHA this 15th February, 2022




D. C. KAMUZORA

JUDGE