

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

**MISC. CIVIL APPLICATION NO. 15 OF 2021**

*(Originating from Civil Application No. 05 of 2019  
of the Juvenile Court of Iringa at Iringa)*

**NAIMA KASSIM ISSA** ..... **APPLICANT**

**VERSUS**

**IBRAHIM ALLY NGWADA** ..... **RESPONDENT**

**10/12 & 13/01/2022**

**RULING**

**MATOGOLO, J.**

Naima Kassim Issa who is the Applicant has filed this application asking this court to issue an order for extension of time for her to file Revision application out of time. She also prayed for costs to follow the event and any other reliefs this court deems fit and just to grant.

The application is by chamber summons made under Section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2002. The same is supported by an affidavit taken by the Applicant herself Naima Kassim Issa. The background of the application is that before the Juvenile Court of Iringa, the Applicant unsuccessfully sued the Respondent one Ibrahim Ally Ngwada vide Civil

Application No. 5 of 2019 seeking for an order compelling the Respondent to take back to her their child one Nafisa d/o Ibrahimu whom the Respondent took and retain her without her consent. That application was not granted as the court ordered for child to remain in the hands of the Respondent her father. However the Applicant was allowed to visit the child. Thus the application was dismissed.

The Applicant was aggrieved but she could not appeal nor file the intended application for revision on time, hence this application for extension of time. The grounds for her failure to file revision are as disclosed in her affidavit that she was supplied with copies of judgment, Decree and proceedings late. The judgment was delivered on 11<sup>th</sup> October, 2019 but she was supplied with the requisite documents on 13<sup>th</sup> November, 2019 in which she was already out of time to appeal.

Secondly after been supplied with the judgment, she was admitted at Manyoni District Hospital for treatment for the illness she suffered, and attached to her affidavit a copy of medical report of Manyoni District Hospital as annexure NK1-2. She stated further that she could not file the revision for reason that she was waiting to recover from illness as recommended by the medical doctor of Manyoni District Hospital. All these are disclosed in the Applicant's affidavit under paragraphs 3, 4, 5, and 6.

This application was argued by way of written submissions following the prayer by the parties which was granted by the court.

The Applicant was not represented. But the Respondent was represented by Mr. Edrick Mwinuka learned advocate. It is the submission by the Applicant in support of the application that the Respondent was her husband, but it was proved that he deserted her with the sick child for almost three (3) years without providing them with maintenance. But later the Respondent took from the Applicant their child by force without the consent of the Applicant. The Respondent denied the Applicant with her right to enjoy parentage of the child that is why she filed an application No. 5 of 2019 against him.

She submitted that she filed an application for extension of time to file revision out of times, she said it is established law that it is court discretion to grant extension of time but the discretion which must be exercised judiciously. However she said there are principles set by court which guide the court in exercising such discretion. She mentioned them to include:-

- (a) The Applicant must account for the period of delay.
- (b) The delay should not be inordinate
- (c) Applicant must show diligence; and
- (d) Existence of point of law such as illegality of the decision sought to be challenged.

The Applicant submitted that those principles were pointed out in 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 CAT

(unreported) which was adopted in the case of ***AFRICAN BANKING CORPORATION (TANZANIA) LIMITED VS. BETTY KAHUMBA***, Civil Appeal No. 221 of 2019 (unreported). She said in those decisions it was emphasized that those guided factors are not meant to be used cumulatively. She said the Applicant has satisfied those criteria.

On the first guide she said after been supplied with copy of judgment on 13<sup>th</sup> November, 2019 soon thereafter she fall sick and was admitted at Manyoni District Hospital for treatment. After get relief she diligently knocked the door of this court to pursue her lost right. The Applicant also argued that the decision sought to be challenged is tainted with illegalities as it contravened Sections 125 and 126 of the Law of Marriage Act because the trial magistrate in his ruling considered hearsay allegations instead of those stipulated by law. The child was forcefully taken by the Respondent from the Applicant at the time their marriage was still in existence. But the Respondent deserted his family without providing maintenance thus Respondent committed offence per Section 40 of the Law of the child Act, Cap. 13, R.E. 2019.

She said the irreparable injury which the Applicant seek to protect relatively outweigh the inconveniences that will be suffered by the Respondent if the custody of the child will continue to be under the Respondent who is living with another woman and the child is sick. She concluded by asking this court to grant extension of time to file revision in order to protect future and wellbeing of the child.

In his reply submission counsel for the Respondent submitted that the Applicant has failed to establish sufficient reasons for extension of time to file the revision. He said there no dispute that sickness is a ground for extension of time. But it is not every time reasons for illness is cited then courts must extend time. He said sickness or illness becomes a ground for extension of time only when it is proved that indeed it is the sickness that caused the delay. He said the Applicant is relying on a letter from Manyoni District Hospital dated 13<sup>th</sup> January, 2020 but the letter which does not state on the seriousness of the Applicant as a sick person. But the letter shows that the Applicant attended in hospital for thirty five (35) days. It does not state or explain whether the Applicant was bed ridden such that she could not file a revision (if it was proper) within the prescribed time. In that latter he said the information provided there in no way this court can scan any sufficient reasons to justify the delay of 599 days from the date of ruling to the date the Applicant filed this application. Mr. Edrick Mwinuka argued that the Applicant has failed to account for each day of delay. If you subtract 35 days Applicant spent attending treatment, there are total of 564 days from 17<sup>th</sup> day of December, 2019 to 2<sup>nd</sup> day of June, 2021 Applicant filed this application, Applicant failed to account each day of delay to trigger the court to grant extension of time sought. He said this demonstrated inaction and unqualified lack of diligence on the part of the Applicant in taking essential steps as it was held in the case of ***DAR ES SALAAM CITY COUNCIL VS. S. GROUP SECURITY CO. LTD***, Civil Application No. 234 of 2015 CAT (unreported).

On the issue of illegality Mr. Mwinuka submitted that the Applicant did not explain how the decision sought to be revised is tainted with the said illegality apart from her swiping allegation in the affidavit that there is illegality mentioned. He said although illegality of the decision sought to be challenged is good reasons for extension of time but the same must be apparent from the court record as it was held in ***LYAMUYA CONSTRUCTION COMPANY LTD*** (supra).

He said there is no any illegality in the decision of the juvenile court. The court considered all the ingredients and requirements to be considered in granting custody of the child.

He submitted further that in his ruling the trial magistrate explained to the Applicant right of appeal per Rule 123 of the Law of the Child (Juvenile Court Procedure) Rules, 2016 and not revision. He said the Court of Appeal of Tanzania in the case of ***ASHURA SEIF VS. MARIAM SEIF***, Civil Application No. 117 of 2015 (unreported) strike out the application for extension of time to file revision on the ground that the ruling complained of was appealable and that revision is not an alternative to an appeal. Mr. Mwinuka prayed to this court to dismiss the application as the same is misconceived since the Applicant has failed to establish good cause, and has failed to account for each day of delay nor illegality of the decision sought to be challenged.

Having carefully read the rival submissions by the parties and examine the court record, the only issue for determination is whether the Applicant has advanced sufficient reasons for this court to grant extension

of time sought by the Applicant. There is no dispute that the parties had a dispute on the custody of their child which was filed by the Applicant in the Juvenile Court of Iringa, that case was decided in favour of the Respondent thus against the Applicant. There is also no dispute that the Applicant did not appeal against that decision or file revision application within the time provided by law.

The Applicant is now praying for the indulgence of this court to grant her extension of time so that she can file application for revision out of time. As it was correctly pointed out by the Applicant, extension of time can be granted or refused by the court as the court has such discretion as it was held in the case **MARTHA ISWALILE VICENT KAHABI VS. MARIETHA SALEHE AND 3 OTHERS**, Civil Application No. 5 of 2012 (unreported). Also in order for the court to grant extension of time, the Applicant must advance sufficient cause for the delay which also entails to account for each day of delay. This position of the law was well explained in the cases cited by the parties that is **LYAMUYA CONSTRUCTION COMPANY LTD** (supra) in which the Court of Appeal gave four factors to be considered by the court before exercising its discretion to grant extension of time as listed herein above. But that case also emphasized on the question of illegality as ground for extension of time which must be apparent on the face of record. The court had this to say:-

*"... the alleged illegality must be apparent on the face of record such as the question of jurisdiction, not one that*

*would be discovered by long drawn argument or processes”.*

The Applicant is also bound under the law to account for each day of delay as it was held in the case of **TANZANIA COFFEE BOARD VS. ROMBO MILLERS LIMITED**, Civil Application No. 13 of 2015 CAT. See also the case of **BHARYA ENGINEERING AND CONSTRUCTING COMPANY LIMITED VS. HAMOUD AHMED NASSOR**, Civil Application No. 342/01 of 2017.

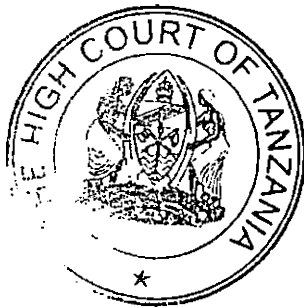
The Applicant alleged that she was supplied with copies of judgment decree and proceeding of the trial court late. The same was supplied to her on 13<sup>th</sup> November, 2019 while the ruling sought to be challenged was rendered on 11/10/2019. Thus from 11/10/2019 to 13/11/2019 32 days elapsed. However the Applicant did not file the present application immediately after being supplied with such document to enable her to appeal. The reason she gave is that she fall sick and attended treatment at Manyoni District Hospital as indicated in annexure NK-1 a letter from Manyoni District Council. In that letter by the medical officer incharge of Manyoni District Hospital it is indicated that the Applicant attended at that hospital from 12<sup>th</sup> November, 2019 to 17<sup>th</sup> December, 2019 that is for a period of 35 days. In that letter the persons mentioned is Naima Kassim Khalfan. But the Applicant throughout the proceedings of the Juvenile Court has been referred to as Naima Kasimu. But before this court the document she filed refers the name of Naima Kassim Issa. It is not clearly known if Naima Kasimu, Naima Kassim Khaffan and Naima Kassim Issa is

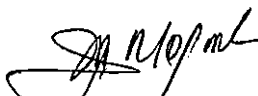


the one and same person. The names indicated in the proceedings before the trial juvenile court are different to what are indicated in the letter from Manyoni District Hospital. She might be a different person altogether. But equally the person who filed the present application is different person to who initiated the proceedings before the trial juvenile court who was Najma Kasimu but the Applicant in this application is Najma Kassim Issa. These are two different persons. Any way let's assume is the same and one person, the days applicant spent to obtain copies of ruling decree and proceedings, and those she spent while attending at Manyoni District Hospital for treatment, that is 32 days and 35 days give the total of 67 days. If subtracted from the delay of total of 599 days, 532 delays is unaccounted for. As pointed out above the Applicant was bound to account for each day of delay otherwise there would be no meaning of having rules prescribing period for taking certain steps. There is another argument raise by the counsel for the Respondent that the Applicant is now seeking extension of time in order to file application for revision. But in its ruling the trial court explained right of appeal to the Applicant pursuant to Rule 123 of the Law of the child (Juvenile Court Procedure) Rules, 2016. But the Applicant is intending to file application for Revision. It was correctly submitted by the Respondent's counsel that revision is not an alternative to appeal. The Applicant did not explain as to why she opted for revision and not appeal, as she has clearly indicated in her application that she prays for extension of time in order to file an application for revision. In the case of ***ASHURA SEIF VS. MARIAM SEIF***, (supra) it was clearly stated that revision is not an alternative to an appeal. The circumstances of that case

are similar to the circumstances of the present application. In that case the Court of Appeal struck out the application for extension of time. This court is bound by the decision of that superior court.

Having so explained as herein above, there is no doubt that the Applicant failed to demonstrate sufficient reasons for the delay nor did she account for each day of delay even to establish the illegality complained of. It follows that this application is non meritorious, the same is dismissed but no order as to costs.



  
**F. N. MATOGOLO**  
**JUDGE**  
**13/01/2022**

Date: 13/01/2022  
Coram: Hon. F. N. Matogolo – Judge  
Applicant: Present  
Respondent: Absent  
C/C: Grace

**Mr. Edrick Mwinuka – Advocate:**

My Lord I am appearing for the Respondent. The matter is for ruling we are ready.


**Appellant:**

I am also ready.

**COURT:**

Ruling delivered.



  
**F. N. MATOGOLO**  
**JUDGE**  
**13/01/2022**