

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**MISC. CIVIL APPLICATION NO.17 OF 2021**

**LUCRECIA MAVERE.....APPLICANT**

**VERSUS**

**GEORGE MANYONGA..... RESPONDENT**  
**(Arising from the Judgment of District Court of Dodoma - R.J.Magoti, RM)**

**Dated 19<sup>th</sup> of February 2021**

**In**

**Matrimonial Appeal No. 3A of 2020**

.....

**RULING**

**8<sup>th</sup> & 28<sup>th</sup> April, 2022**

**MDEMU, J:.**

This application for extension of time to appeal to this Court intends to challenge the decision of Dodoma District Court in Matrimonial Appeal No. 3A of 2020. The application preferred under the provisions of Section 25(1)(b) of the Magistrates' Courts Act, Cap. 11, R.E.2019 and supported by an affidavit of the Applicant one Lucrecia Maverere, is on the following orders: -

- 1. That, this Honourable Court may be pleased to grant extension of time to file an appeal.*
- 2. Cost be provided for.*

*3. Any other relief(s) this Honourable (Tribunal) (sic)  
may deem just and fit to grant.*

On 10<sup>th</sup> March, 2022 when the matter was scheduled for hearing, Mr. Majaliwa Wiga, counsel for the Applicant, prayed hearing to be by way of written submissions, the prayer which was not objected by Mr. Charles Simon and Ms. Grace Benny, counsels for the Respondent. The scheduling order was complied with as written submissions were filed on 24<sup>th</sup> of March and 8<sup>th</sup> of April, 2022 for the Applicant and Respondent respectively.

Mr. Majaliwa Wiga submitted among other things that, according to the Applicant's affidavit, reasons for her delay as per paragraphs 5, 6 and 8 of the affidavit are **first** that, she is financially poor and that, she wasted a lot of time looking for legal aid services upon which her efforts yielded nothing to the extent that, she failed to appeal in time. **Second** is that, the judgement of the first appellate Court is tainted with irregularities because the extent of contributions to the acquisition of matrimonial assets was not properly considered. He supported his argument by citing the case of **Constantine Victor John vs. Muhimbili National Hospital, Civil Application No.214/18 of 2020**(unreported) and that

of **Shanti vs. Hindocha & Others (1973) E.A 207** to support his argument on financial incapacity.

On the ground of material irregularity, among other things, the Learned Advocate submitted that, the appellate Court divided matrimonial assets without considering the extent of contribution of each party towards acquisition of the same. Also, the appellate Court failed to consider that the trial Primary court entertained the matter with no jurisdiction since it entertained the marriage contracted under Christian rites Contrary to Section 18(1)(a) of the Magistrates' Courts Act. He added that, the court did not also satisfy itself if the dispute got referred first to the Marriage Conciliation Board and no certificate from the Board was tendered as per the case of **Yohana Balole vs Anna Benjamin Malongo, Civil Appeal No.18 of 2020** (unreported). To him, this was mandatory and noncompliance is fatal.

In response to the Applicant's written submissions, Mr. Simon submitted that, the applicant's affidavit introduces new facts which do not support her application. He cited the case of **Republic vs. Yona Kaponda & Others [1985] TLR 84** to support her assertion. Mr. Simon submitted further that, the Applicant on her submissions advanced three grounds to support her application. The second ground which is about

material irregularities, in his view, is not a ground for extension of time to appeal rather it is the issue which goes to the merits of appeal. He cited the case of **Caritas Kigoma vs.KG Dews LTD. [2003] TLR 420** to that effect.

He also faulted the ground on economic and financial hardship actuated by failure to have support from her husband to be a mere lie as the two has voluntarily separated for a number of years, hence the same holds no water. Furthermore, Mr. Simon submitted that, the Applicant in her submissions introduced new facts which do not tally with Paragraphs 5 and 6 of her affidavit in support of the application with an intention to escape from accounting for days of the delay as stated in the case of **Juma Shomari vs. Kabwere Mambo, Civil Application.No.330/17 of 2020** (unreported).

I have taken into account submissions of parties in this application, together with the affidavit of the Applicant and counter affidavit of the Respondent. According to the depositions of the Applicant, specifically paragraphs 5, 6 and 8 of the affidavit, there is what the Applicant submitted as grounds for extending time. The three paragraphs are reproduced as follows: -

5. *That while the Applicant is preparing (sic) her appeal unfortunately she got financial constraints because she is nowhere to depend to get some money more than depends to her husband who are in conflicts.*
6. *That, the Applicant also was trying to seek other legal advice from legal aid that will help her freely, but her effort proves failure to proceed with case on time.*
8. *That, the Applicant's intent(sic) to file appeal is due to the fact that the Respondent contribution to the said matrimonial home is lower compared to the Applicant and the whole Judgement was marred by illegality.*

As to accounting for days of the delay, the record shows that, the judgement before the first appellate court was issued on 19<sup>th</sup> February ,2021 while this application was filed on 18<sup>th</sup> May,2021 implying that, 84 days lapsed from the date of judgement of the District Court and 54 days' from the time limit for filing an appeal. Did the Applicant account for days of the delay?

It is a settled principle of law that, whoever seeks enlargement of time to do an act authorized by law after the prescribed time has expired,

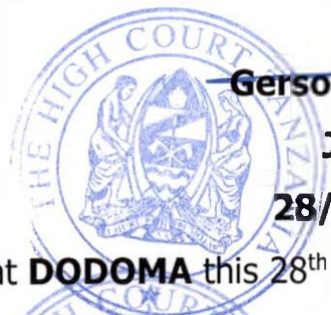
has to account for each day of delay. See the case of **Exim Bank (Tanzania) Limited vs. Jacqueline A. Kweka, Civil Application No.348/18 of 2020** (unreported). In the instant application, the Applicant has not managed to account for all fifty-four (54) days for her delay. As per her affidavit and written submissions, she contended that, her delay was due to economic and financial hardships which led her to spend a lot of time looking for legal aid services although her efforts were fruitless. In this therefore, the prayer for extension of time may not be granted as no sufficient cause for the delay has been shown as stated in **Caritas Kigoma vs.KG Dews LTD. [2003] TLR 420.**

On the ground of illegality in the impugned decision; in the case of **VIP Engineering and Marketing Limited and Three Others vs. Citi Bank Tanzania Limited** (unreported), the Court of Appeal had the view that, where a point of law at issue is the illegality of the impugned decision, the same constitute good cause for extending time. In the instant application, the illegalities raised is that no certificate from Marriage Conciliation Board certifying failure to reconcile parties as required under the provisions of section 101 of the Law of Marriage Act, Cap. 29 R.E 2019. Equally, as complained, the extent of contribution

towards acquisition of matrimonial assets was not taken into account in determining the distribution.

These, in my view, are illegalities in the impugned decision which may only be corrected given opportunity to the High Court on appeal. On that stance, I hereby extend time to file appeal to this Court for a period of thirty (30) days from the date of this ruling. Order as to cost is hereby refrained.

It is so ordered.



**Gerson J. Mdemu**

**JUDGE**

**28/04/2022**

**DATED at DODOMA** this 28<sup>th</sup> day of April, 2022



**Gerson J. Mdemu**

**JUDGE**

**28/04/2022.**