

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TEMEKE HIGH COURT SUB-REGISTRY)

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC CIVIL APPLICATION NO 3 OF 2021

*(From Matrimonial Appeal No. 33 of 2020 at the District Court of Kinondoni before Hon.
H.M. HUDI, Original Matrimonial Cause No 38 of 2019 of Kinondoni Primary Court)*

ALEKUNDA JOHN URIO..... APPLICANT

VERSUS

BERNARD H. KONGOLA..... RESPONDENT

RULING

14/12/2021 & 07/2/2022

I.C. MUGETA, J.

I intend to be very brief in determining this application. The facts of the matter are simple and straight forward. On 13/10/2021, vide Misc. Civil Application No 84/2021, High Court, Dar es Salaam Registry, this court granted orders for extension of time for the applicant to appeal to this court against the decision of the district court. The appeal was to be filed within 14 days from the date of the order. Once again, she has knocked the doors of this court with the

same prayer. *'The court be pleased to extend time for the applicant to file an appeal out of time'*

The reasons for the application are mainly two. They are explained at paragraphs 5 -11 of the affidavit. These are that the ruling granting extension of time was not supplied up to 22/10/2021, the applicant was outside the country and that the appeal was submitted in time at the District Court of Kinondoni but it was rejected for a reason that it was filed in a wrong registry. It is my view that party who has to comply with court orders must do so within the prescribed time. A copy of the ruling or drawn order was not a prerequisite to the filing of the appeal. Further, it is immaterial that the applicant was outside the country, what matters is that the appeal had to be filed as ordered. In that regard, the only issue for determination is whether the applicant filed the appeal to the Kinondoni District Court within time but the same was returned.

Annexure "D" to the affidavit is an extract from the JSDS purporting to prove the said return. Indeed, it contains the remarks: - *'file the petition at Temeke IJC district court'*. However, it does not show the remarks or the filing date. Paragraph 8 of the affidavit avers that it was filed on 26/10/2021 and paragraph 9 is to the effect that the remark was made on 27/10/2021.

Paragraph 6 of the counter affidavit responds to paragraphs 8 and 9 of the affidavits by alleging negligence on part of the advocate for the application for failure to timely comply with the court orders. The deponent is silent on what were the actual filing and file return date.

The court ordered the appeal to be filed within 14 days from 13/10/2021. This means the appeal period started to run on 14/10/2021 and expired on 27/10/2021. The JSDS administrators have supplied me with a report which shows that the appeal was filed at the District Court on 27/10/2021 at 12.56.16 hours. Therefore, the appeal was lodged within time in terms of rule 37 (1) of the Law of Marriage (Matrimonial Proceedings) Rules which requires appeals to the High Court to be filed in the subordinate court which made or passed the decision, order or decree appealed against. The decree appealed against was passed by the District Court of Kinondoni District.

In view of the foregoing, the applicant cannot be faulted for this delay. The court admission officer erred to return the appeal. The application is hereby granted without orders as to costs. The appeal to be filed within ten days of this order.



I.C. Mugeta
I.C. MUGETA

JUDGE

7/2/2022

Court: Ruling delivered in chambers in the presence of Pendo Charles advocate for the Respondent who also hold brief for Alphonse Katema for the Applicant.

Sgd: I.C. MUGETA

JUDGE

7/2/2022