

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

**(PC) MISC. CIVIL APPLICATION NO. 12 OF 2021**

*(Originating from Songea District Court Matrimonial Appeal No. 01/2020 Matrimonial*

*Case No. 66/2020 at Mfaranyaki Primary Court)*

**SOFIA HUGO KUNGURU ..... APPELLANT**

**VERSUS**

**DICKSON GABRIEL HONDE ..... RESPONDENT**

**RULING**

Date of last order: 17/03/2022

Date of Ruling: 31/03/2022

**Before: S. C. MOSHI, J**

The application has been filed under section 25 (1) (b) of the Magistrates' Courts Act, Cap. 11 R.E 2019, and it concerns three prayers; one, extension of time to allow the applicant to file an appeal out of time; two, any other relief this court may deem fit and three, costs of the application. The application originated from Appeal No 1/20221, Songea District Court, which originated from civil case No. 66/2020 Mfaranyaki Primary Court. It was preferred by way of chamber summons, and it was supported by the applicant's affidavit. The respondent opposed the application, he filed a counter affidavit to that effect.

At the hearing of the application the appellant was represented by Ms. Neema Nyagawa advocate whereas the respondent was represented by Mr. Zuberi Maulid, advocate.

The main issue in applications for extension of time, before the court exercises its discretion to enlarge time limits which are prescribed by law, is whether the applicant has advanced sufficient reasons. However, the discretion must be acted upon judiciously.

In support of the application Ms. Neema Nyagawa submitted *inter alia* that, the reason for delay as stated at Paragraph 4 of the affidavit, is due to the fact that, the applicant failed to appeal in time due to ill health. She said that, the applicant fell ill due to the fact that she was being frequently beaten by the respondent, and in support of that, there is a P.F 3 which has been attached to the affidavit.

She submitted further that, at paragraph 5 of the affidavit the applicant stated that she was taking care of her grandfather who parented her, she took care of him from July to 4/8/2021, and the grandfather was sick up to the time of his death. After the death of her grandfather the applicant was not feeling well until September, when she felt alright, and a death certificate is attached to the affidavit.

She again argued that, at paragraph 8 of the affidavit, the applicant averred that there are illegalities in District Court's judgment as it

divided matrimonial properties to children C/S 114(1) of **Law of Marriage Act**, Cap 29 R.E 2019; she proposed that, this is sufficient reason for this court to extend time. In this respect she cited the case of the **Principal Secretary Ministry of Defence and National Service V. Devram Valambhia**, Court of Appeal of Tanzania (1992) TLR 185. She said that, in the cited case, the Court of Appeal held that, the court may extend time limit for appealing where the court has committed an irregularity.

In response thereto, Mr. Zuberi, argued among other things that, it is a legal principle that for extension of time to be granted, the applicant must explain each and every day; the discretion must be exercised judiciously, he referred to the case of **Sebastian Ndaule V. Grace Rwamafa**(legal representative of Joshua Rwamafa), Civil Appeal No 4/2014, Court of Appeal (Unreported), at page 8.

He stated further that, the applicant has failed to account for each and every day, at paragraph 4 the applicant said that, the decision was delivered on 20/4/2021, if that is so, she was supposed to account for each day from the date of decision. Counting from the date of the decision to the date which he the application was lodged, on 10/12/2021, almost eight months had elapsed. He said that, the applicant says that, between May – June she wasn't feeling well due to

ill health, the condition which was caused by being assaulted by the respondent. However, the PF3 which is attached is dated 15/10/2020 and, the PF3 does not even show the extent of injury or whether she attended any treatment.

He contended further that, the applicant said that, from July to September she was busy taking care of his grandfather, who was admitted at Morogoro regional hospital and died on 4/8/2021, however, this statement does contain false information. The death certificate shows that the grandfather died on 4/8/2021 but in paragraph 5 she stated that she was taking care of his grandfather from July to September, how could she take care of a dead person. Furthermore, there is no medical evidence report, that her grandfather was admitted at the hospital. She attached a death certificate which does not prove the extent of sickness, it proves death but it does not prove if the deceased had been ill for a long time.

He said that, surprisingly, the time that she was taking care of the grandfather, she was involved in execution proceeding which is shown in annexure P.I collectively to the counter affidavit. The proceeding relates to execution of decree which took place on 13/7/2021 and it involved division of matrimonial properties. He said that, allowing the application would be abuse of court process. Litigation must come to an end. If the

execution has been partly enforced, this indicates that the applicant was satisfied with the decision, and some property had been distributed.

Regarding paragraph 8 of the affidavit of the applicant, which relates to illegalities, he referred to the case of **Lyamuya construction Company Ltd V. Board of Registered Trustees of young Women's Christian Association of Tanzania**, Court of Appeal of Tanzania (Unreported), Civil application No. 2/2010 at page 8 and 9. He contended that, the advocate was supposed to address the illegality which is apparent on record, and not a long argument illegality. He proposed that, in this case in order to discover the irregularity which has been pointed out, there has to be a long argument process.



He finally argued that, the applicant has failed to demonstrate sufficient reasons, and she has failed to account for dates from 20/4/2021 to 10/12/2021.

I have taken into consideration the parties' submission and the relevant law; as indicated herein above, it has been said time and again that, the court may grant extension of time, where the applicant shows sufficient reasons and accounts for each day of delay. It is apparent that, the applicant failed to account for some days of delay, and even the days which she said she was sick and the days which she accounted for long

ailment of her grandfather were not supported with medical evidence. However, I have considered the irregularity which was pointed out. It is my view that, the alleged irregularity which was pointed out raises a novel point of law which if left unattended, it may lead to miscarriage of justice. The applicant raised a legal issue relating to matrimonial properties being divided and placed to persons who are neither husband nor wife contrary to section 114 (1) of the Law of Marriage Act. It is my view that the argument involves a vital point of law which needs to be considered by this court, as if not resolved, the matrimonial properties may end up in wrong hands.

That said, I allow the application, the intended appeal should be filed within Twenty-one (21) days. I order no costs in view of parties' relationship.

Right of Appeal is Explained.



**S. C. MOSHI**

**JUDGE**

**31/03/2022**

**Date:** 31/02/2022

**Coram:** Hon. W.S Gh'humbu, J

**Applicant:** Absent.

**For the applicant:** Ms. Neema Nyagawa, Advocate


**Respondent:** Present.

**For the respondent:** Mr. Zuberi Maulid, Advocate.

**C/C:** U.J Ndendya, PRMA

**Court:**

Ruling delivered this 31<sup>st</sup> March, 2022 in the presence of Ms. Neema Nyagawa, learned counsel for the applicant who is also present and in the presence of Mr. zuberi Maulid, learned counsel for the respondent who is also present..

  
**W.S NG'HUMBU**  
**DEPUTY REGISTRAR**  
**31/03/2022**