

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF DAR ES SALAAM**

**AT DAR ES LAAM**

**MISCELLANEOUS CIVIL APPLICATION No 501 OF 2020**

**(Arising from High Court Civil Case No 3 of 2018 emanating from Ilala District Court Miscellaneous Civil Application No 391 of 2016 and Original Ilala District Court Matrimonial Cause No 43 of 2006)**

**BETWEEN**

**WILLIAM MPALANGE.....APPLICANT**

**VERSUS**

**LILIAN BAVU.....RESPONDENT**

**RULING**

**MRUMA, J**

This is an application for enlargement of time within which to appeal. It is by way of a Chamber Summons which was presented for filing on 30<sup>th</sup> September, 2020 and supported by the affidavit of the applicant William Mpalange sworn on 28<sup>th</sup> September 2020. The grounds of the application are mainly that there were illegalities both in the proceedings of the District Court and those of the High court and having being advised by legal expert GS ukongwa that an application for

extension of time basing on illegality can be lodged at any time, he filed this application.

The Respondent oppose the application. In an affidavit in reply sworn by Mr. Pasensa Dickson Karubone advocate for the Respondent on 17<sup>th</sup> December 2020, the Respondent contend that the application lacks reasonable and genuine grounds to warrant court to grant the extension sought.

This application was first assigned to my sister in bench her Ladyship Ebrahim J, before she was transferred to another working station and it was re-assigned to me.

At the hearing the Applicant appeared in person and was not represented whereas the Respondent was represented by Mr Rubone, learned advocate.

The Applicant submitted that he failed to appeal within the prescribed time because he failed to get necessary documents in time. He said that the impugned judgment was handed down on 24<sup>th</sup> October 2019 but he was supplied with a copy of ruling on the date he could not remember and that was after he wrote a letter to the Judge in charge to complain about the delay in being supplied with the copy of ruling . He

didn't substantiate anything about illegality in the proceedings of the District court or of the High Court.

On his part, Mr Rubone advocate for the Respondent contended that the Applicant has not shown any sufficient reason to warrant this court to enlarge time for him in order to file a notice of appeal out of time. He said that the ruling of the High was available and ready for collection on 30<sup>th</sup> October 2019 but the Applicant didn't collect it. He said that a copy of ruling attached to the Applicant's application is not certified therefore it is not easy to ascertain as to when it was collected from the registry.

Enlargement of time is a discretion which must be exercised judicially on proper analysis of the facts and application of the law to the facts. The power to grant leave to file an appeal out of time is a discretionary one and the party seeking such discretionary orders which are only given on a case to case basis, not as a matter of right, must satisfy the court by placing some material before the court upon which such discretion may be exercised. Applications for enlargement of time within which to appeal will not be granted if the delay is inexcusably long, where injustice will be caused to the other party or where there is no reasonable justification.

In this case, the ruling sought to be appealed was delivered on 24<sup>th</sup> October 2019, and the application was filed on 30<sup>th</sup> September 2020, nearly 11 months later. On the day the judgment was delivered, the applicant was presented in court. Thus time began to run against him from that day, despite his claim that he was denied a copy of judgment which claim has not been substantiated. Indeed the applicant has a right of appeal, but now has the added onus of explaining what prevented him from exercising that right within the prescribed time.

Secondly the applicant has pleaded illegality. Illegality simply means being contrary to the laid down procedures. While I agree with the principle that where illegality is set as a ground for seeking extension of time, court will always grant the application, but a party asserting illegality must sufficiently substantiate his/her assertions. Court will not grant an extension of time simply because illegality is mentioned. The Applicant must go further and demonstrate what has been done which is forbidden by law. The applicant is required to prove the illegality of the proceedings.

Therefore, when an application is made for enlargement of time, it should not be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of "good cause" showing that the justice of the matter warrants such an extension. The court is required to

carefully scrutinize the application to determine whether it presents proper grounds justifying the grant of such enlargement. The evidence in support of the application ought to be very carefully scrutinized, and if that evidence does not make it quite clear that the applicant comes within the terms of the established considerations, then the order ought to be refused. It is only if that evidence makes it absolutely plain that the applicant is entitled to leave that the application should be granted and the order made, for such an order may have the effect of depriving the respondent of a very valuable right to finality of litigation.

I have scrutinized the evidence in support of the application. There is nothing to show what effort the applicant made, if any, between 24<sup>th</sup> Day of October 2019 (the day the ruling was delivered) and 30<sup>th</sup> September 2020 (the day he filed this application). The mere fact that on 30<sup>th</sup> day of October 2019 he wrote a letter to the judge in charge requesting to be supplied with the copy of ruling for appeal purpose per se is not sufficient evidence that he was not supplied with the same because:-

- i. The Judge in charge is not responsible for supplying copies of judgment, orders and/or rulings of the court. The officer responsible is the Deputy Registrar of the court thus, the request ought to have been addressed to him;

- ii. Even if we assume that the judge in charge was the right person to supply him with the requested copy of the ruling, the mere fact that his letter was received by the office of the judge in charge does not constitute evidence that he followed up a copy of judgment but failed to get it. Writing a letter to the judge in charge or even to the registrar is one thing and making a follow up for purposes of collecting it is completely different thing. The applicant ought to have proved that he made a follow up but he couldn't get that copy for about 11 months. That has not been done

These are eleven months unaccounted for out of the fourteen days available to him to lodge a notice of appeal. Since he was present in court when the ruling was delivered, the applicant had imputed or constructive knowledge of the decision he now intends to appeal. He therefore was not hindered from taking the vital step. He either was undecided and opted to appeal as an afterthought or was simply indolent. Either way, he is guilty of unexplained and inordinate delay in commencing his appeal. The mistakes, faults, lapses or dilatory conduct of a party should not be visited on the other party. The applicant has not shown good cause for the extension of time.

Regarding prejudice to the Respondent, the rules of procedure entail and regulate timelines and timeliness of procedural action for purposes of redressing the aberration of delays in litigation, so as to facilitate the timely and final resolution of disputes. It is a constitutional imperative that litigants should know with finality, and within reasonable time, the courts' decisions on the claims brought before courts. Parties should not be held captive to endless litigation. The delay in the prosecution of the intended appeal affects the certainty and finality of the matter which was commenced way back in 2006. Allowing the applicant to appeal out of time will in the circumstances inconvenience the Respondent, whose enforcement of the decree will be delayed, but is likely to occasion her significant prejudice.

I accordingly deny the applicant enlargement of time. The application is dismissed with costs. I so order.



  
**A.R. Mruma**

**Judge**

Dated at Dar Es Salaam this 17<sup>th</sup> day of May, 2022.