

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**CIVIL APPEAL NO. 57 OF 2022**

*(Arising from Civil Application No. 212 of 2021 before Ilala District Court )*

**METHOD JUMA .....APPELLANT**

**VERSUS**

**ANNA CHAKE MKEYENGE ..... RESPONDENT**

**JUDGMENT**

*8/2/2023 & 17/2/2023*

**MKWIZU, J;**

The appellant has before this court brought an appeal contesting the ruling by the District Court of Ilala District Court dated 28/3/2022 Civil Application No 212 of 2021. The brief fact of this appeal goes thus, Appellant and respondent had a matrimonial misunderstanding which was later registered as Matrimonial cause No 317 of 2020 by the respondent, Anna Chake Mkeyenge at Ukonga Primary Court. The respondent was successful in that matter. She sought to execute the decree. It is at that stage that the appellant approached the District Court for an extension of time to file an appeal against the Primary court decree on the ground of the illegality of the impugned decision. The District Court, however, on 28/3/2022 dismissed the application for lacking in merit which is the subject matter of this appeal.

The appellant's memorandum of appeal has three grounds. The main complaint is a blame to the District Magistrate for ignoring the evidence adduced by the appellant for the extension of time to file appeal.

Alternatively, the trial magistrate is condemned for failure to correctly interpret the law in respect of jurisdiction on matrimonial causes based on Christian marriage and to consider the illegality raised as a ground for extension of time.

Respondent was duly served with the memorandum of appeal and her reply thereto was filed in court on 21/6/2022. When the matter came for hearing on 8/2/2023, only the appellant appeared without legal representation. Respondent did not appeal and there were no reasons adduced to justify her absence, necessitating an order for an ex-parte hearing hence this *ex-parte* judgment.

The Appellant however did not have much to tell the court when called to address in support of his grounds of appeal. His main request was for the court to consider his grounds and allow the appeal.

I have considered the grounds and the lower court's records. The main issue here is whether the dismissal of the applicant's application for an extension of time by the district court was justified.

The applicant's application for extension of time at the district court was premised on section 14 (1) of Cap 89 RE 2019. The section reads: -

*"Notwithstanding the provisions of this Act, the **court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.**" (Emphasis added)*

So the key factor is whether the applicant has exhibited sufficient reason to warrant the district court allow his application for an extension of time in which illegality was ascribed as a ground for the extension.

Undoubtedly, illegality or otherwise in the impugned decision can by itself constitute a sufficient ground for an extension of time. This is in accordance with the principle laid down in the **Principal Secretary Ministry of Defence and National Service vs. Devram Valambia**, (1992) TLR 185 and **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil 12 Application No. 2 of 2010 (unreported) where the court reiterated the following guidelines for the grant of extension of time:

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*"(a) The applicant must account for all the periods of delay.*

*(b) The delay should not be inordinate.*

*(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*

*(d) If the court feels that there are other sufficient reasons, such as **the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.**"* (Emphasis added)

The court has however insisted that, to qualify a ground for an extension of an illegality referred to must be apparent on the face of the records. In **Lyamuya Construction** (supra), the Court of appeal had this say:

*"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in VALAMBHIA 's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that 'of sufficient importance' and, I would add that **it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by long-drawn argument or process.**"*  
*"[Emphasis added]*

The first point raised is on the jurisdiction of the primary court on Christian marriages. Appellant's contention on this point was that the primary court has no jurisdiction on matters relating to Christian marriages. This issue was held to have no merit after the district Court's conclusion that the Primary Court has jurisdictions in all matrimonial disputes regardless of the nature of the marriage the dispute emanates from. I think this issue should not delay the court further. Since jurisdiction is a statutory issue then, the MCA should assist the court in checking if this point is reflecting the truth of the complaint by the appellant. Section 18(1) Magistrates' Courts Act, Cap. 11 RE 2019 provides 18. -(1) A primary court shall have and exercise jurisdiction

***"(a) in all proceedings of a civil nature***

*(i) where the law applicable is customary law or Islamic law: Provided that no primary court shall have*

*jurisdiction in any proceedings of a civil nature relating to land;*

*(ii) for the recovery of civil debts, rent, or interests due to the Republic, any district, city, municipal or town council, or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed fifty million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value;*

*(iii) for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and*

***(b) in all matrimonial proceedings in the manner prescribed under the Law of Marriage Act.***

*(c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act;*

*(d) in all proceedings in respect of which jurisdiction is conferred on a primary court by any other law; and*

*(e) in all proceedings in which the Attorney General's right of audience is excluded."*

The Sub section (b)( of section 18 (1) above speak loud and clear. It confers the primary court with jurisdiction to determine matrimonial proceedings under the law of the marriage Act. And sections 76 of the Law of Marriage Act is specific on the jurisdiction of the primary court. The section says:

*"Original jurisdiction in matrimonial proceedings shall be vested concurrently in the High Court, a court of a resident magistrate, a district court, and a **primary court.**" (Bold is mine)*

As gleaned above, the powers vested on the primary courts by the Law of Marriage Act is unconditional. All the courts from primary courts to the High Courts have a concurrent jurisdiction over matrimonial proceedings regardless of the nature of the marriage contracted to, by the parties. This is the law.

The parties herein had in Matrimonial cause No. 317 of 2020 requested the Ukonga primary court to adjudicate upon their a matrimonial dispute relating to dissolution of marriage and distribution of matrimonial assets. This is well reflected in the Appellant's own written submissions in support of the application for enlargement of time filed at the District Court. There is no doubt therefore that the primary court did what it was mandated to do by the law. The point of illegality raised has no merit.

The second complaint raised faults the trial court for relying on the local government documents in the distribution of the matrimonial asset is as rightly decided by the District Court, this is a factual issue, it is not a point of law worth consideration on its own without accounting for the delay

The trial magistrate was therefore justified to dismissing the application for the extension of time.

This appeal is therefore without merit. It is hereby dismissed. And considering the nature of the dispute and the relationship of the parties, I order each party to bear own costs.

**DATED at DAR ES SALAAM this 17<sup>th</sup> day of February 2023.**



**E. Y. MKWIZU  
JUDGE  
17/02/2023**

