

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
KIGOMA SUB REGISTRY**

AT KIGOMA

MISC. CIVIL APPLICATION NO.08 OF 2022

(Arising from Matrimonial Cause Appeal no. 03 of 2020 of the High Court at Kigoma,
Matrimonial Cause Appeal No.15 of 2018 of the District Court of Kigoma and Originating
from Matrimonial Cause No.65 of 2017 of the Ujiji Primary Court)

MOSHI S/O MASHARUBU APPLICANT

VERSUS

OLIVER D/O TASHA MAHALA

(AS ADMINISTRATRIX OF THE ESTATE OF

THE LATE HAPPINESS D/O TASHA RESPONDENT

Date of the Last Order: 16.02.2023

Date of Ruling: 17.03.2023

RULING

MAGOIGA, J.

The Applicant, **MOSHI S/O MASHARUBU** under the provisions of section 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E.2019] and any other enabling provision of the law preferred this application praying that this Court be pleased to grant the following orders:-

- (1) Extension of time to file Notice of Appeal to the Court of Appeal of Tanzania against the judgement of the High Court of Tanzania at Kigoma in Matrimonial Cause Appeal No.3 of 2020 dated 13th day of October, 2020;
- (2) Extension of time within which to file an application for certification on a point of law worth for the Court of Appeal consideration against said judgement
- (3) Costs of this application, and
- (4) Any other relief(s) as it will deem fit to grant to the applicant.



The application was accompanied by the affidavit of the applicant stating the reasons for grant of the prayers sought.

Upon served with this application, the respondent filed counter affidavit stating the reasons why this application should not be granted.

When this application was called on for hearing, the applicant was advocated by Mr. Method R.G. Kabuguzi, learned advocate, while the respondent appeared in person and unrepresented.

Mr. Kabuguzi arguing this application adopted the affidavit in support of the application and pointed out that the reasons why the former appeal filed in time was struck out was due to defectiveness of the certificate of delay issued by District Registrar and not the laxity or negligence of the applicant. According to Mr. Kabuguzi, the delay was technical one and for the reasons, the learned advocate for the applicant strongly urged this court to grant the application as prayed.

In reply, the respondent had nothing much to submit but prayed to adopted her counter affidavit and urged this court to consider the same and dismiss this application.

In rejoinder, Mr. Kabuguzi reiterated his earlier submissions.

Having gone through the affidavit in support of this application, in particular, paragraphs 5, 6 and 7 shows that, indeed, the delay was justified and technical one in the circumstances of this application. This



makes this application straight forward that where delay is technical and not actual, the application must be granted. See the case of **William Shija Vs. Fortunatus Masha [1997] TLR 132**. The inadvertent in the certificate of delay was caused by the Registrar and not the applicant.

The statement by the respondent that the incompetency of the certificate was negligence of the advocate is not true because he had no hand in its preparation and as such are rejected. Also, the time taken from the last order to the filling of this application is five days which are reasonable.

On the foregoing reasons, I hereby find that this application must be and is hereby granted as prayed with an order of the costs in the course.

The applicant, therefore, is given 30 days within which to file notice of appeal and make an application for certification of points of law worth for consideration by the Court of Appeal of Tanzania.

It is so ordered.

Dated at Kigoma this 17th day of March, 2023.




S. M. MAGOIGA
JUDGE
17/03/2023