

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. CIVIL APPLICATION No. 38 of 2022

(Arising from Matrimonial Cause No. 1/2022 in the District Court of Mbeya at Mbeya)

Adolph Isidori Mahon APPLICANT

VERSUS

Triphonia PeterRESPONDENT

RULING

Ebrahim, J:

The Applicant herein has made the instant application seeking for extension of time to appeal out of time against the decision of the District Court of Mbeya at Mbeya in Matrimonial Cause No. 1/2022. The application has been brought under the provisions of **section 14(1) of the Law of Limitation Act, CAP 89 RE 2019** and it is supported by the affidavit affirmed by Salma Hashim Musa, Counsel for the applicant.

Going by the Applicant's counsel averments in their affidavit, the assigned reason for failure to lodge the appeal in the prescribed time is the delay caused by the court in availing her client with a copy of decree which is mandatorily required to be attached with

memorandum of appeal. As the contents of the affidavit would reveal, the impugned judgement at the District Court was delivered on 5th day of August 2022 and he was availed a copy of judgement and proceedings on 12th day of August 2022. However, despite making follow ups to the court registry to be availed with a copy of a decree, the same was supplied to him on 21st September, 2022 whilst the prescribed time to file appeal lapsed on 18th September 2022 i.e., (45days). Hence, the instant application which was filed on 26th September, 2022.

In her counter affidavit, the respondent vehemently disputed the reasons assigned by the applicant. She contended that both parties were addressed by the court after the delivery of judgement that judgement and decree were ready for collection. She thus put the applicant into strict proof thereof.

In this application the applicant was represented by advocate Justice Zege whereas the respondent preferred the services of advocate Martha Gwalema. The application was disposed of by way of written submission as per the schedule set by the court.

Submitting in support of the application, counsel for the applicant recapitulated the series of events from when the judgement was

delivered to the time when he had full set of copy of judgement, decree and the proceedings. She submitted that the applicant managed to obtain a copy of judgment and decree on 13th August 2022 after the judgement was delivered on 5th August 2022. However, he was not supplied with a copy of decree until 21st September 2022. She tried to lodge the appeal online without a copy of decree on 18th September 2022 but the same was summarily rejected by the court as there was no copy of decree attached. She filed the instant application on 26th September 2022 seeking for extension of time as statutory time limit lapsed on 19th September 2022.

She invited this court to be guided by the holding of the Court of Appeal in the case of **Mantrac Tanzania Limited Vs Raymond Costa**, Civil Appeal No. 90 of 2018, which among others stated that

"delay to be supplied with copies of proceedings and judgement and improper decree contributed to the delay for the applicant to appeal within the prescribed period and thus found that reason to be sufficient cause for the delay".

She further cited the case of **Mumello Vs Bank of Tanzania** (2006) E.A. 227 where it was held that court has discretion to grant or

refuse extension of time where sufficient reason for the delay has been established.

She thus prayed for the court to allow the application as prayed.

Responding to the submission made by the counsel for the applicant, counsel for the respondent argued that there is no proof that has been supplied by the applicant to prove that he was availed the decree by the court clerk on 21.09.2022 or that his counsel filed the appeal on line.

He pointed out the contradictions on who told the applicant that the decree is not ready for collection that while at para 4 of the affidavit it was mentioned that the applicant was informed by the court clerk, in the submission counsel for the applicant said the applicant was informed by the presiding magistrate hon. A.P. Scout, SRM. He contended further that the applicant failed to account for each day of delay from 21.09.2022 to 26.09.2022 when he filed the instant application. He further distinguished the cited cases of **Mantrac Tanzania Limited (supra)** and **Mumello's (supra)** on the reason that no sufficient reason for the delay has been established. To support his argument on the need to establish sufficient reasons in an application for extension of time,

he cited the case of **R Vs Yona Kaponda and 9 Others** [1985]; and the persuasive case of **Kehongo Mosefi and Mwera Mosefi Vs Muluga Peter Mohorya (The administrator of the late Mohoria Kenene t/a Peter Mohorya)**, Misc. Land Application No Number 64/2021 (HC-Musoma- Unreported) pg 5. He also cited the case of **Dr. Ally Sabhay Vs Tanga Bobora Jamaat** [1997] TLR 305 where it was held that:

"those who come to courts of law must not show unnecessary delay in doing so, they must show great diligence".

He thus prayed for the application to be dismissed with costs.

In rejoinder, the applicant's counsel had nothing much to add. She simply argued that the decree was handed to the applicant and anyone could visit the court register. She mainly reiterated her submission in chief.

Coming to address the real issue i.e., whether the applicant has established sufficient reason for the delay; I have considered the affidavit supporting the application, the counter affidavit by the Respondent and their rival submissions. As hinted earlier on, the applicant's reason for this court to grant extension of time is

pegged on delay by the court to supply him with a copy of decree.

It is a settled principle of the law that granting or refusing to grant extension of time is absolutely at the court's discretion. Nevertheless, the same has to be judiciously exercised upon sufficient cause being shown- see the cited case **Benedict Mumello vs Bank of Tanzania (supra)**.

The issue to be decided is whether the application at hand is meritorious. I hasten to hold that it is not for the reasons that shall be apparent soon.

Counsel for the applicant affirmed in the affidavit from the information availed by the applicant that the applicant was informed by the court clerk after collecting the judgement and proceedings that the decree is not ready. However, no name of such clerk has been availed to court nor affidavit from the said clerk to prove the same has been attached. Again, as correctly observed by the counsel for the respondent, while counsel for the applicant is saying that he was told by the court clerk, advocate Salma Musa submitted that the applicant was informed by hon.

Scout, the presiding magistrate. The question that follows is which version of the story is true?

Furthermore, I visited the proceedings on record to see as to whether there is any letter written by the applicant applying for a copy of judgement and decree to confirm that he indeed requested for the said copy of decree on time, I found none. If at all, both attached copies of judgement and decree show that the same were signed on 05.08.2022.

I further hasten to agree with the argument by the counsel for the respondent that there is no proof that counsel for the applicant made an attempt to file the appeal on time but the same was rejected for not attaching a copy of decree as the same would assist to show that the delay was not occasioned by the applicant.

Furthermore, I would have no difficulty to invoke the provisions of **section 19(2) of the Law of Limitation Act, Cap 89 RE 2019** of excluding the time used to obtain the requisite documents for filing the appeal had the applicant had proof that indeed the delay was not occasioned by his sloppiness or negligence but the court. All I see is the allegations and empty words advanced to

the court without any proof. Verily, counsel for the applicant should have known better that all what was said needed proof.

That being said, I join hands with the counsel for the respondent and find that all the cited cases by the applicant are distinguishable as there is no sufficient reason for the delay that has been established to warrant this court to exercise its judicial discretion.

From the above background, I find this application to be unmeritorious and I dismiss it. Given the relationship between parties, I give no order as to costs.

Accordingly ordered.



Mbeya

10.02.2023

A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a faint circular stamp.

R.A. Ebrahim

JUDGE