

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO
MISC. APPLICATION No. 48 OF 2023**

(Arising from District Court of Kilosa, Matrimonial appeal No. 42/2022)

COSTANTINE JOHN NZILA APPLICANT

VERSUS

JURIETH URASA RESPONDENT

JUDGEMENT

Hearing date on: 07/03/2023

Judgement date on: 14/03/2023

NGWEMBE, J:

This ruling is a result of an application for extension of time which was lodged by the applicant in this house of justice on 13th September, 2022. Substantially the extension of time is requested to allow the applicant to institute an appeal against the judgment and decree delivered by Kilosa District Court on 24th June 2022.

Tracing the genesis of this application goes back to the Urban Primary Court in Matrimonial Cause No. 08 of 2021, whereby the two were husband and wife but their marriage turned sourer hence sought refuge to the court of law for divorce; division of matrimonial properties, custody and maintenance of one issue born out of their marriage. As they so prayed, the primary court granted their prayers for divorce, then proceeded to divide their matrimonial properties into 60% and 40% in



respect to their matrimonial house. In respect to maintenance of a born child, the applicant was ordered to pay TZS. 40,000 monthly and the custody of the child was given to the respondent. Lastly, seven goats and six cows were ordered to be given to the respondent.

Such order partially aggrieved the respondent herein, she accepted all orders of the trial court save only on division of matrimonial properties and the amount of the maintenance, consequently she appealed to the District Court of Kilosa, which partly allowed the appeal by ordering equal division of matrimonial house and payment of TZS. 120,000/= monthly as maintenance allowance.

Such order again aggrieved the applicant but was caught in the web of time limitation. As such he ventured to actualize his intention first by seeking this court's leave for extension of time, thereafter lodge his appeal against the judgement of the district court for Kilosa.

Categorically, on hearing date of this application, the applicant being unrepresented, submitted briefly that he had no information of when their judgement before Kilosa District Court was delivered as the Magistrate was transferred and that he was making close follow-ups without any success. Also, he contended that the District Court erred by deciding on matters which are totally outside of their possessions, for instance they do not possess animals. Thus, he is praying for extension so as he may challenge the same.

Replying thereto, the respondent shortly stated that, I quote "I have an objection to this application" That was all from both sides.



Having heard both parties as briefly as summarized hereinabove, I have drawn keen attention on the powers of this court to grant extension of time. Indeed, this court has no limit so to speak, so long there is a satisfactory reason to exercise its discretion. More so, it is a cardinal principle of law, that though the court has discretionary powers to grant or refuse to grant extension of time, yet those powers must always be exercised judiciously.

In any event, the duty of the applicant is to satisfy the court for good reasons which prevented the applicant from appealing within time. Lack of convincing reasons to allow this court to invoke its discretionary powers to extend time, obvious extension of time will not easily be available. In the case of **Mbogo Vs. Shah [1968] EA 93** the court discussed several factors upon which the court may consider prior to granting extension of time.

The factors which were advanced by the applicant for his delay as rightly comprised in his affidavit in paragraphs 3, 4, 5 and 6, indicates ignorance of what was happening in the District Court for Kilosa. He simply said, he neither appeared nor was present in court when the judgement was delivered. Added that he is a lay person, that he was supplied with court judgment after lapse of time to appeal, also he took time seeking legal advice before he could be advised to lodge this application for extension of time. Those reasons, have reminded me of the guidance provided by the Court of East Africa in the case of **Shant Vs. Shi Ndocha and others [1973] E.A 207** whereas the court held:-

"The applicant for extension of time is concerned with showing sufficient reasons why he should be given more time and the

most persuasive reason that he can show the delay has not been caused or contributed by dilatory conduct on his part"

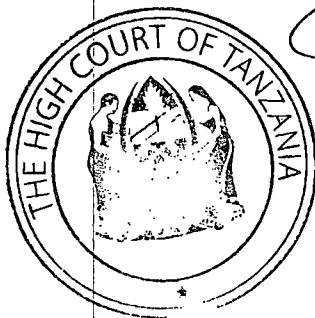
In this application, I have tried to find reasons for delay, but all fall short to convince my conscience that there were logical reasons for that delay. Absence of a party on the date of delivery of judgement or seeking legal advice cannot constitute good reason to convince this house of justice to invoke its discretionary powers to extend time. Also being a lay person has never been an excuse for delay. What I can gather from the affidavits of the applicant is lack of diligence in handling his case and or lack of diligence to make close follow up in his case.

Unfortunate may be to the applicant, the law of limitation knows no mercy to whoever, be professor of law or lay person, be rich or poor whoever is caught in the web of time limitation, obvious must produce good and sufficient cause for such delay even if is a single day. Failure of which, this court of law cannot invoke its discretionary powers to extend time. In this application, the applicant has demonstrated lack of diligence as a reason for extension of time.

I therefore, proceed to dismiss this application with no order as to costs.

Order accordingly.

Dated at Morogoro in chambers this 14th March, 2023



A handwritten signature in black ink, appearing to read "P. J. Ngwembe", is written over a horizontal line.

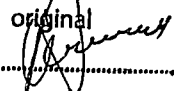
P. J. NGWEMBE

JUDGE

14/3/2023

Court: Ruling delivered at Morogoro in Chambers on this 14th day of March, 2023, **before A.W. Mmbando, DR** in the presence of the applicant and in the presence of the respondent.

Sgd: A.W. Mmbando
DEPUTY REGISTRAR
14/03/2023

I Certify that this is a true and correct copy of the original	
	
Deputy Registrar	
Date: 14/3/23	at Morogoro

ORIGINAL