

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. CIVIL APPLICATION NO. 1 OF 2022

(Arising from the decision of Mbulu District Court in Matrimonial Cause No. 1 of 2022
Hon. V. E. Kapugi -RM dated 18/8/2022)

PENDAEL MARTINE BAYO.....APPLICANT

VERSUS

ZEBEDAYO IBRAHIMU.....RESPONDENT

RULING

Date: 20/3/2023 & 28/4/2023

BARTHY, J.

The applicant aggrieved with the decision of Mbulu district court on Matrimonial Cause No. 1 of 2022 dated 18th August, 2022 preferred the present application under Section 14 (1) of the Law of Limitation Act, [CAP 89 R.E 2019], (hereinafter referred as the Act), seeking for the following reliefs;

- 1. That this honourbale court be pleased to grant on (sic) order for extension of time to file petition of appeal out of time.*



2. Any other orders this honourable Court shall deem fit to grant.

The application is supported with an affidavit sworn by the applicant herself. The respondent was duly served but he did not file his counter affidavit.

The court ordered the hearing of the application be by way of written submissions. Still the respondent did not file his reply submission. The application remained unchallenged by the respondent.

The applicant in her written submission in chief in support of the application, she adopted the contents of the affidavit to form part of her submission. In the applicant's submission as drawn by Caroline Mollel learned advocate in gratis, she pointed out that, in order for the court to grant an application for extension of time, good cause must be shown.

To argument her point she cited the case of **Tanzania Revenue Authority v. Tanga Transport Co. Ltd** Civil Application No. 4 of 2009 (unreported) on what amounts to sufficient cause.

Reference was further made to the decision of **Kalunga Company & Advocates Ltd. v. National Bank of Commerce Ltd**



[2006] TLR 235, where the court held that the discretion of the court to extend time shall be exercised judicially in considering the length of delay, the reason for the delay, the chance of success of the intended claims and the degree of prejudice that the respondent may suffer if the application is granted.

Ms. Mollel further stated that, the appellant lodged Matrimonial Cause No. 1 of 2022 before Mbulu District Court (hereinafter referred to as the trial court) seeking for declaration that the marriage with the respondent has broken down irreparably. Thus, she sought for a decree of divorce and distribution of matrimonial properties.

At the end, the trial court decreed the separation for two years in lieu of the decree of divorce.

The applicant unamused with the decision she filed this application claiming she was unable to file an appeal within time against the decision of the trial court, because she became ill due to enteric fever. The appellant claimed she was attending treatment at Dongobesh Health Center since 28th September 2022.

Then sometimes on October, 4th of 2022 the trial court summoned the applicant to discuss about matrimonial properties which were with

the applicant during the separation period. However, the issue could not be resolved.

The applicant now wishes to challenge the decision of the trial court, hence this application.

Having gone through the applicant's submission and the supporting documents of this application, the sole issue for determination is whether the applicant has advanced sufficient reason for the court to exercise its discretion for the extension of time.

The applicant moved this court with her application preferred under Section 14 (1) of the Act, which provides;

*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].*



From the foregoing provision, before the court can exercise its discretion for extension of time, it is imperative for the applicant to show reasonable and sufficient cause. But the provision of the law quoted above does not state what amounts to reasonable and sufficient cause.

In the case of **Director Ruhonge Enterprises v. January Lichinga**, Civil Application No. 1 of 2006 (unreported) the Court of Appeal, stated that: -

" What amounts to sufficient cause has not been defined..."

Amongst the factors to be taken into account are succinctly stated by the Court in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) are;

- "(a) The applicant must account for all the period for 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; and*



(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".

In the instant application the applicant has claimed sickness had prevented her from lodging the appeal within time. The applicant stated she was suffering from enteric fever since 28th September 2022, where she was undergoing treatment at Dongobesh Health Centre.

The applicant has attached a letter from Dongobesh Health Centre which shows that the applicant was attending treatment at the health care several times since 28th September 2022.

In determining if the applicant's sickness is the sufficient reason for extension of time, I made reference to the case of **Juto Ally v. Lukas Komba & Another**, Civil Application No. 484/17 of 2017 (unreported), where the Court of Appeal held that, the applicant must show that illness contributed to the delay as opposed to a general statement.

In another case of **Sabena Technics Limited v. Michael J. Luwungu**, Civil Application No. 451/18 of 2020 citing **Juto Ally**, the



Court of Appeal reiterated its stance holding to amount to a good cause for the delay, there must be evidence that sickness had a bearing on the delay.

In the instant application the applicant has not clearly stated how sickness prevented her from filing the appeal within time. The letter attached to her affidavit only shows the applicant had attended for treatment several dates without specifically mentioning which dates the applicant received the treatment.

The applicant was required to attach documents evidencing that she truly received the medical treatment for the whole period of delay. That was necessary in order for this court to gauge the extent of delay caused by the sickness. In absence of such explanation, particularly on the dates the applicant had received medical treatment: I hold that the applicant's sickness did not have any bearing with the delay in filing the appeal within time.

On the other hand, the applicant has also failed to account for each day of the delay. There is a plethora of authorities which require the applicant to strictly account for each day of the delay.

These include the cases of **Elifazi Nyatega & 3 Others v. Caspian Mining Ltd.** Civil Application No. 44/08 of 2017 and **Moses**



Mchunguzi v. Tanzania Cigarette Co. Ltd, Civil Application No. 531/4 of 2016 (all unreported).

In the instant matter the impugned decision was delivered on 18/8/2022 that means the applicant was required to lodge her appeal within 45 days of the decision. Hence the appeal was required to be lodged on or before 2/10/2022.

The instant application was lodged on 18/11/2022. Apart from the general claim of the applicant being sick, the affidavit in support of the application is conspicuously silent on what happened within that period. A 45 days delay is an inordinate delay which the applicant should have strictly accounted for each day.

Consequently, I find that the applicant has not been able to advance any sufficient cause for the court to grant an extension of time. The application lacks merits and it is accordingly dismissed. Given the nature of the matter, I will not make an order as to costs.

It is so ordered.

Dated at Babati this 28th April 2023.



G. N. BARTHY
JUDGE