

IN THE HIGH COURT OF TANZANIA

TEMEKE SUB-REGISTRY

ONE STOP JUDICIAL CENTRE

MISC. CIVIL APPLICATION No. 50 OF 2022

(Originating from Matrimonial cause No. 67/2022 of Kinondoni District Court).

EVA GODFREY MALLEAPPLICANT

VERSUS

DANFORD YOHANES MBWILORESPONDENT

RULING

Date of last order: 28/03/2023

Date of Ruling: 07/06/2023

OMARI, J.

This is an Application for extension of time to appeal against the decision of the District Court of Kinondoni in Matrimonial Cause No. 67 of 2020 delivered on 30 August, 2021. The Application is brought in Chamber Summons under section 14(1) of the Law of Limitation Act, CAP 89 R.E 2019 (the LLA) and section 95 of the Civil Procedure Code CAP 33, R.E 2019 (the CPC) and is supported by an Affidavit sworn by the Applicant stating the reasons for the delay, to wit; she was sick for a long period, financially broke and she could not find an advocate in time who could guide her through the procedure of appeal.

The Applicant states in her Affidavit that, when she got money to afford to consult a lawyer she found out that she was out of time to appeal. Lastly, the Applicant stated that if leave is granted she has overwhelming chances of success and if it is withheld she will suffer irreparably.

When this Application was called for hearing, the Applicant appeared in person while the Respondent was represented by Sunday Ahmad, learned advocate. The Application was disposed by way of written submissions.

In her submission in support of the Application, the Applicant has submitted on one ground, that is sickness. She stated that the matter giving rise to this Application was determined by the District court of Kinondoni in the judgment delivered on the 30 August, 2021. However, before the judgment was delivered she was sick for a long period, she could not even attend the court for the judgment therefore she could not follow up the appeal process in time, thus she preferred this Application for extension of time to file an appeal under section (14) (1) of the LLA.

The Applicant also supported her submission by referring to the case of **Winfred Wensilaus Mtimalyasi (as Administrator of the Estate of The Late Wenslaus Heimes Mtimalyas) v. Helmes Mtimalya** Land Appeal No. 6 of 2017 where this court that:

'the appellant was hopelessly out of 45 days when he filed this appeal on 06/01/2017. He also did not file an application for extension of time. On account of this point of preliminary objection alone, the appeal ought to be dismissed'

She submitted that it is a requirement of the law that anyone is out of time to file an appeal then they should file an application for extension of time to file an appeal out of time, thus, her Application.

In the reply the Respondent's counsel submitted that he is aware that the LLA has provided for the forum for a person to apply for extension of time, however, time will be enlarged after showing the court a good, reasonable and sufficient cause. Mr. Ahmed asserted that a reasonable or a good cause has not been defined by any law in Tanzania, but there are a number of Court of Appeal decisions which provide that granting extension of time is court's discretion and the same has to be exercised judiciously.

To support his proposition, the learned counsel referred to the case of **Wambura N. J. Waryuba v. The Principal Secretary Ministry of Finance and Another**, Civil Application No. 320/01 of 2020 Court of Appeal (unreported) the court referred to the celebrated and renowned case of **Lyamuya Construction Ltd v. The Registered Trustees of the Young Women Christians Association of Tanzania**, Civil Application No. 20/2010

(unreported) which provided for the factors to be considered before the grant of application for extension of time, such as; to account for all the period for delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he tends to take and the existence of point of law of sufficient importance; such as the illegality of the decision sought to be challenged. Mr. Sunday submitted that the Applicant herein has fallen short to the standards that have been provided in the above case law.

On the ground of illness adduced by the Applicant, the learned counsel avers that there is neither a medical sheet nor any other document from an authorized hospital in the Applicant's Affidavit to show that she was sick for more than 360 days. In addition, since the Affidavit is an oath that qualifies to be an evidence, it has to be proved in accordance to section 110 of the Evidence Act, Cap 6, R.E 2022, however the Applicant did not do so as it was held in the case of **Wambura N. J Waryuba v. The Principal Secretary Ministry of Finance and Another**(supra).

To conclude his submission, the learned counsel for the Respondent submitted that the judgment and decree which this Application arise from was delivered on 30 August, 2021. By virtue of section 80(2) of the Law of Marriage Act, CAP

29 R.E 2019, an appeal from the district court to this court was supposed to be filed within 45 days from the date of decision which means it should have been filed by 14 October, 2021. Therefore, she is required to account for a delay of 360 days, however she has failed to do so in her submission and failure to do so amount to dismissal of the Application as held in **Wambura N. J Waryuba v. The Principal Secretary Ministry of Finance and Another**(supra). He prayed for this court to exercise its discretionary power and dismiss this Application since the Applicant has failed to produce good, reasonable and sufficient cause and account for the delay.

On the basis of the submissions by the parties the issue for this Court's determination is whether the Applicant has established good cause for the delay to warrant grant of this Application.

I will start with the provisions of section 80(2) of the LMA which provides that an appeal against the decision of the district court is required to be lodged within forty five days after the date of the decision. The Applicant is well aware of this, that is why she knocked on the doors of this court for it to enlarge the time for her to prefer her intended appeal. She moved this court vide section (14) (1) of the LLA which 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 supplied)

In terms of the provision above, for a person to be granted a leave to appeal out of time, they must show a good and sufficient cause for delay. This is what the court uses to determine whether the Application is meritorious as per the relevant laws and established principles. As submitted by the Respondent's counsel, it is true that the law does not define what constitutes a good cause. However, case law has set out the factors to be considered in determining whether good cause has been established. In determining whether the Application is meritorious I have to consider whether the Applicant has accounted for the delay to warrant enlargement of time as she seeks this court to do. In doing so, I wish to be led by the interpretation of the Court of Appeal in the celebrated case of **Lyamuya Construction Company Ltd v. Board Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where the court formulated four guiding principles for exercising the discretion to extend time judiciously. For the sake of clarity, I will reproduce the guidelines as follows:

- a. The Applicant to account for the delay.

- b. The delay not be inordinate.
- c. The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take.
- d. If the court feels there are other sufficient reasons such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged.

In addition to the above guidelines; the case of **Sebastian Ndaula v. Grave Rwamafa (Legal Personal Representative of Joshua Rwamafa**, Civil Application No. 4 of 2014, Court of Appeal of Tanzania (unreported) which was later cited by the Court of Appeal in the case of **Elias Kahimba Tibanderana v. Inspector General of Police and A.G**, Civil Application No. 338/01 of 2020, Court of Appeal of Tanzania (unreported) is relevant to this Application for it stresses on the need to account for the delay.

In the present Application, the reason adduced by the Applicant is that the delay was due to sickness. She averred that even before the judgment was delivered by the trial court she was sick that is why she could not lodge an appeal on the time stipulated by the law. The Respondent contended that the Applicant did not produce any evidence such as medical chits from any hospital to support the assertion that she was sick for the period of about 360 days.

This Court is aware that illness is a good cause for the delay in filing a matter within the prescribed time. This position was stated in the case of **Fredrick Mdimu v. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (Unreported). However, the said illness needs to be not only explained but also it must be the actual reason which delayed the Applicant from filling the intended matter within time. In the case of **Shembilu Shefaya v. Omari Ally** [1992] TLR 245, the Court of Appeal was of the view that the application does not give an elaboration of the sickness that occasioned the delay, the need for a thorough explanation has the legal basis in the principle that in the application for extension of time the Applicant is required to account for every day of delay. Examining the Affidavit by the Applicant it is true that there is no supporting evidence to prove that she had been sick or was attending any hospital during the lapsed time.

Furthermore, in the cases of **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (unreported), **Vedastus Raphael v. Mwanza City Council and 2 others**, Civil Application No. 594/08 of 2021 and **William Shija v. Fortunatus Masha** [1997] T.L.R. 213 the Court of Appeal was of the view that although what amounts to "good cause" is not defined, it is based on the discretion of the court which in most

cases depends on the circumstances of the case which are to be determined judiciously.

Reasonable or sufficient cause depends upon relevant material provided by the party seeking an extension of time to move the Court to exercise its discretion. Moreover, good cause must be determined by reference to all the circumstances of each particular case as was held in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13. of 2010, Court of Appeal of Tanzania. In the present Application the Applicant has submitted nothing other than what she has deposed in her Affidavit thus, failed to show good cause as to why she did not file her appeal on time albeit being 360 days out of time.

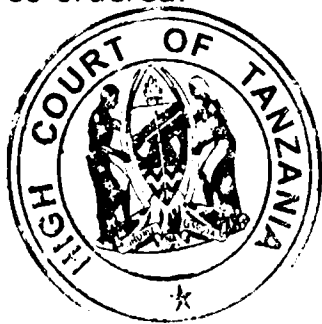
In the case of **Bushfire Hassan v. Latina Lucia Masanya**, Civil Application No.3 of 2007 (unreported) it was stated that: -

'Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.'

Using the guidelines set in **Lyamuya Construction Company Ltd v. Board Registered Trustee of Young Women's Christian Association of Tanzania** (supra) as a yardstick in the Application before me, I find that, in addition to the delay being inordinate, the Applicant's has not supported her

reason for delay with any meaningful materials to enable this court to make a determination. In the circumstances, there being no sufficient explanation or good cause for this Court to extend the time to file the intended appeal; I find that the Application has no merits. It is hereby dismissed. Due to the nature of the matter, I make no order as to costs.

It so ordered.




A.A. OMARI

JUDGE

07/06/2023

Judgment delivered and dated 07th day of June, 2023.


A.A. OMARI

JUDGE

07/06/2023