

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO

MISC. CIVIL APPLICATION NO. 25 OF 2022

(Originating from Matrimonial Appeal No. 135 of 2020 District Court of Kilombero at Ifakara)

SAPHIA HUSSEIN MHAWI..... APPLICANT

VERSUS

HAMISI IDDY UDU.....RESPONDENT

RULING

Hearing date on: 15/6/2023

Ruling date on: 21/6/2023

NGWEMBE, J:

The applicant unrepresented, on 8th June, 2022 lodged an application for extension of time before this court. Noticeably, the applicant is seeking extension of time upon which to file an application to set aside the dismissal order passed by this court before Hon. R. A Ebrahim Judge, on 3/12/2020 for want of prosecution.

I find it indispensable however, slightly to narrate what transpired between the parties as per the records of the court for the reasons to be disclosed in due course. Parties were husband and wife; unfortunate their marriage was eroded by feuds and tensions which ended up in court. Matrimonial Cause No. 17/2020 before Ifakara Urban Primary Court was

preferred seeking divorce. Consequently, the court granted their prayer for divorce.

The issue which holds them in serious loggerhead is not divorce, rather is division of matrimonial properties (house and a tractor). The respondent herein filed an appeal No. 8 of 2020, before the district court of Kilombero which altered the orders of the Primary Court on the disputed properties. Aggrieved, this time the applicant herein preferred an appeal No. 135 of 2020 before this court at Dar es Salaam. The appellant claimed that, before hearing of the appeal she was convinced by the respondent and advised to abandon the appeal so that, they can settle their differences amicably before the Division Executive Officer. Thus, she proceeded to abandon her appeal and this court before judge Ebrahim dismissed it for want of prosecution.

To her surprise on 2021 she was served with copies of the application for execution of appeal No, 8 of 2020 before Kilombero district court. In turn the applicant walkup and found her way to this court seeking extension of time upon which to set aside the dismissal order of Matrimonial Appeal No. 135 of 2020 delivered on 3/12/2020.

Having that background, now I turn to narrate the arguments of the disputants on the hearing date. Both parties were unrepresented, hence tongue tied with very few contributions. For instance, the applicant, had nothing useful arguments than reliance to her affidavit. Even in her affidavit, the only paragraph which carry reasons for abandoning her appeal is in paragraph 5, that she abandoned hearing of her after being convinced by the respondent who advised her to settle the matter amicably before the

Division Executive officer. Due to lapse of time, she could not file an application to set the dismissal order unless she has granted extension of time.

The respondent, did not file counter affidavit before this court, also being not represented briefly stated that, this application be dismissed with costs for there is no reason at all for such long delay.

The application for extension of time is purely within the court's discretionary powers. Notwithstanding, those powers are exercised judiciously. Exercising powers judiciously means making decision based on sufficient reasons. This position was demonstrated by the Court of Appeal in the case of **Selina Chibango vs. Finihas Chibango, Civil Application No. 182A of 2007, CAT, Dsm (2011)** thus: -

"No particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application. Each case, therefore, should be looked at in its own facts, merits and circumstances, by looking at all the circumstances of the case before arriving at the decision on whether or not sufficient reason has been shown for extension"

Generally, extension of time is granted upon the applicant's exhibition of good cause to the satisfaction of the court. That the said delay was not caused by her negligence or inaction and that by considering the circumstances of the case, it suits the spirit of justice that the applicant be granted such extra time for realising the cause she contemplates. This is

synonymous to the Court of Appeal's decision in **Mumello Vs. Bank of Tanzania [2006] 1 EA 227 (CAT)** where it was *inter alia* ruled: -

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Despite the principles above presenting "sufficient cause" as a bottom line in the cases of this nature, our courts have maintained a clear position that *sufficient cause* or *good cause* is never fixed, but an irregular sense extractable from circumstances of each case. Likewise, in the cases of **Tanga Cement Company Limited Vs. Jumanne D. Massanga and Another, Civil Application No. 6 of 2001 (unreported)** and **William Shija Vs. Fortunatus Masha [1997] TLR. 213 (CA)**, it was *inter alia* ruled that: -

"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."

In this application, the applicant through her affidavit disclosed one reason, that the delay was not caused by her negligence or inaction, but due to settlement agreement before Division Executive Officer marked annexure SHM-3 between herself and the respondent. As a result, the applicant agreed and honored that agreement by abandoning her appeal, which ended up being dismissed for want of prosecution. The said agreement was annexed to the applicant's affidavit marked SHM-3. However, the respondent dishonored their agreement by filing an execution of appeal No. 8 of 2020.

On the hearing, the respondent did not refuse that fact, rather he prayed the application be dismissed.

In other words, the respondent though he is legally entitled to apply for execution of the court decree, but also the executed agreement as annexed SHM-3 to the affidavit also binds them. Always this court cannot entertain illegal tricks and participate in such hoax of the loving husband and wife. Accordingly, I may out of humanity may advise that parties may register their agreement before the executing court, otherwise the affected party may institute criminal trials for fraud, but this application for extension of time will amount into blessing mischiefs.

All said and done, this application for extension of time cannot stand. Accordingly, it is dismissed with no order as to costs.

Order accordingly.

Dated at Morogoro this 21st June, 2023.

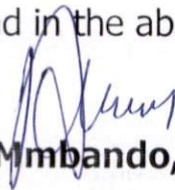


P. J. NGWEMBE

JUDGE

21/6/2023

Court: Ruling delivered at Morogoro in Chambers on this 21st day of June, 2023 in the presence of Applicant and in the absence of the Respondent.



Sgd: A. W. Mimbando, DR

21/06/2023