

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TEMEKE SUB-REGISTRY
(ONE STOP JUDICIAL CENTRE)**

AT TEMEKE

MISC. CIVIL APPLICATION NO. 21 OF 2023

CONTADO DONAT.....APPLICANT

VERSUS

ROSE DIDAS..... RESPONDENT

(Arising from the decision of the District Court of Kinondoni at Kinondoni)

(Kiswaga, SRM)

Dated 29th August 2022)

in

Matrimonial Cause No. 04 of 2018

RULING

20th & 28th July 2023

Rwizile, J.

This is a ruling on an application for an extension of time to file an appeal out of time. The applicant is planning to challenge the the decision of District Court of Kinondoni in Matrimonial Cause No. 04 of 2018. The application is made under section 80(1) and (2) of the Law of Marriage Act, [Cap 29, R.E 2019] and section 14(1) and (2) of the Law of Limitation Act, [Cap 89, R.E 2019]. It is as well supported by the affidavit of the applicant stating the grounds on which this application is based.

Parties who appeared in person made oral arguments before the court. The appellant in his submission stated that the appeal was filed out of time. It was dismissed because the judgment was obtained late. He further argued that, if the judgment was supplied in time, he could have not delayed filing the appeal as the same was supplied on 4th October 2022.

The respondent briefly resisted the appeal and submitted that the appellant has no evidence to back up his story and that the court should proceed with the execution as there is no order for stay and this application be dismissed. In a rejoinder, the appellant stated that he has brought evidence to prove that he received the judgment on 4th October 2022.

Before this application was filed, the appellant had lodged Civil Appeal No. 52 of 2022. It was heard and the decision was delivered on 06th April 2023. What transpires in that appeal which is worth noting is that the respondent raised a preliminary objection on a point of law that, the said appeal was time-barred. The appellant argued before the court that he was indeed late but it was due to obtaining copies of the judgment without proceeding on 4th October 2022. He added that, the court should ought to exclude the time spent waiting for copies of the judgment and decree.

As I have shown before, upon hearing the objection, on 06th April 2023, this court dismissed the appeal for being time-barred. The applicant was not happy with the decision, he has now filed an application for extension of time to file the same appeal.

As a matter of general principle, to grant or refuse an application for the extension of time is entirely at the discretion of the court. But that discretion, must be exercised according to the rules of reason with the aim of arriving at a justice decision, in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), the court stated the following;

- '(a) The applicant must account for all the period of 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.*
- (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.'*

The affidavit that supports this application stated reasons for this application in paragraphs 4, 5, and 6. What is stated therein does not dispute that the applicant had filed the appeal which was dismissed for

being time barred. This means therefore, this case was found by this court to have been out of time.

The point to determine is whether, this application is tenable in law. I think, section 9 of the Civil Procedure Code, [Cap 33 RE 2019] provide the answer as it states that:

'No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try a such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.'

Since time limitation was discussed before by this court and found that it was time barred it cannot be said, that this application is tenable. In essence it a *res judicata*. As far as this court is concerned, this application is misplaced, it ought to have been filed before filing an appeal that was dismissed. That being the case, I dismiss this application. I, based on the nature of the case and the parties, make no order as to costs.




A.K. RWIZILE
JUDGE
28.07.2023