

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB - REGISTRY OF MWANZA

AT MWANZA

MISC. CIVIL APPLICATION NO. 127 OF 2023

[From PC Civil Appeal No. 32 of 2023]

VERONICA MASANJA-----APPLICANT

VERSUS

KABULA MAJANI-----RESPONDENT

RULING

Oct. 3rd & 13th, 2023

Morris, J

The present application is at the instance of Veronica Masanja. She is moving the Court to extend time for her to lodge an application for a certificate on point of law. Upon obtaining the subject certificate, she will appeal to Court of Appeal. The application is supported by her affidavit. The respondent, however, did not file her affidavit in contest of the application.

Of interest, according to PC Civil Appeal No.32 of 2023, both parties were married to one John Bujilima. In 2012, the applicant (younger wife) unsuccessfully sued her husband before Kabila Primary Court (*the trial court*) vide Civil Case No. 23 of 2012. She was claiming against the spouse Tshs.

4,000,000/= as proceeds from the sale of 360 tins (*debe*) of rice from 2011 season's harvest. It was alleged that the husband sold the rice and gave the money to the respondent (senior wife). Seven years later, in 2019, their husband died. The applicant then successfully sued the respondent before the same trial court (vide civil case no. 8 of 2022). The suit was for, *inter alia*, recovery of Tshs. 4,000,000/= sale proceeds allegedly given to the respondent by their late husband.

The respondent was aggrieved. She appealed to the District Court of Magu vide Civil Appeal No. 8 of 2022. The appeal was not sustained. Through her PC Civil Appeal No. 32 of 2023, this Court quashed the decision of the two lower courts and set aside orders therefrom. It is the applicant's turn now. Dissatisfied, she intends to appeal to the Court of Appeal. However, the certificate on point of law is to be obtained first; hence, this application.

During hearing of this application, each party was represented by own advocate. Messrs. Mussa Mhingo and Adam Robert, both learned advocates, represented the applicant and respondent respectively. For the application, it was submitted that the to-be impugned judgement was delivered on 27/6/2023 but the copy was supplied to the applicant on 28/7/2023. After



getting the said copy, the applicant was mobilizing the money for advocate up to 2/8/2023. On 3/8/2023 this application was filed.

In reply, it was submitted by the respondent that, there is no evidence on record to prove that the copy was supplied late to her. The respondent argued that no corresponding letter from the applicant and/or court official(s)' affidavit as when the copy was ready for collection. Against the second ground, it was submitted that this application was not filed on *pro-bono* basis. To the respondent, the application lacks merit accordingly.

After considering the submissions of both parties, the court now sets itself to address the issue *whether or not grounds advanced by the applicant* (delay in supply of court records, economic constraints) *suffice for this court to allow the application*. I will analyze each of the grounds at a time.

At the outset, I reiterate the sound position of the law that, the applicant must demonstrate sufficient reason(s) for his/her delay. In so doing, he/she should prove how each day of delay justifiably passed by at no applicant's fault. See, for instance, ***Hamis Babu Bally v The Judicial***



Officers Ethics Committee and 3 Others, CoA Civil Application No. 130/01 of 2020 (unreported). Further, the essence of setting the time limits in law is, among other objectives, to promote the expeditious dispatch of litigation [**Costellow v Somerset County Council** (1993) IWLR 256]; to provide certainty of time tables for the conduct of litigation [**Ratman v Cumara Samy** (1965) IWLR 8]; and to put litigation to an end.

The first ground for the application is encapsulated in paragraphs 4 and 5 of Veronica Masanja's affidavit. The said paragraphs read: -

*"4. That immediately on the same day, I lodged a **notice** of intention to appeal and filed the same but I was **not issued with the copy of the same**.*

*5. That I managed to lodge a notice of intention of appeal on 27/07/2023 but **copy of the same** was issued to me on 28/07/2023".*

From the two paragraphs above, allegedly what was not issued to the applicant is a copy of "notice of intention to appeal" (sic) not the copy of judgement as submitted by the applicant's counsel. Submissions from the bar are not evidence. That is the law. I accordingly seek reliance on **The**

Registered Trustees of Archdiocese of Dar es Salaam v The Chairman, Bunju Village Government, Civil Appeal No.147 of 2006; ***Ison BPO Tanzania Limited v Mohamed Aslant***, Civil Application No. 367/18 of 2021; and ***Ally Abdallah v KUGI's Transporter Ltd and Two Others***, Land Revision No.12 of 2022 (all unreported).

The above firm position of the law notwithstanding; and assuming that it was a copy of judgement that was intended to be deposed instead, the applicant is still duty bound to prove that the same was supplied to her on 28/7/2023. That is, 31 days after the date of delivery. It is a settled law that for the application for extension of time to be granted, the applicant must account for the whole period of delay; his/her delay should not be inordinate; applicant must show diligence not apathy, negligence or sloppiness in the prosecution of his/her course; and the applicant must have a meritorious case in the intended course such curing illegality apparent thereon.

Reference for the foregoing position is made to ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2/2010; and ***The Registered Trustees of Archdiocese of Dar es***

Salaam v The Chairman Bunju Village Court and Eleven Others,
(*supra*) [both unreported].

In this application, the applicant has nothing in her affidavit to prove that she diligently or promptly pursued her matter. As correctly submitted for the respondent, no corresponding letter was attached to the affidavit to prove that the applicant requested for the copy of judgement. Also, she filed no affidavit of the court officer who supplied her with the copy of judgement on the alleged delayed-date and the reason thereof. Therefore, about 30 days were not accounted for. Indeed, it is not exhibited any proof to hold her otherwise than founding that she was negligent.

I reiterate the cardinal principle of law that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported); the Court held 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”. [See, also, ***Yazidi Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another,***

Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)***, Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; and ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, (all unreported)]. Therefore, the first ground lacks merit. I accordingly overrule it.

Regarding the second ground, paragraphs 7 and 8 of the affidavit reveal that for 5 days (28/07/2023 - 02/08/2023); the applicant were looking for money to engage an advocate. Financial constraints, under exceptional circumstances, may sufficiently stand as a good reason for extension of time. For example, when the applicant falls under the category of legal aid scheme. See cases of ***Costantine Victor John v Muhimbili National Hospital***, Civil Application No. 214/18 of 2020; and ***Yusuph Same and Another v Hadija Yusuph***, Civil Appeal No. 1/2002 (both unreported).

In these proceedings, the applicant is not under services from any legal aid scheme. She, thus, falls outside the realms of the exceptional

circumstances expounded above. Therefore, I find the 2nd ground barren of merit too.

For the stated reasons, I find this Court not sufficiently moved to extend time as prayed by the applicant. The application, thus, lacks merit. It is accordingly dismissed. Each party to shoulder own costs. It is so ordered.



C.K.K. Morris

Judge

October 13th, 2023