

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 05 OF 2023

(Arising from Matrimonial Cause No. 30 of 2020 in the Resident Magistrate Court of Dar es Salaam at Kisutu before Hon. E.N. Kyaruzi - PRM)

DAUSON NEMWELI SINDATO..... APPLICANT

VERSUS

STELLA SOSSI NGOWI..... RESPONDENT

RULING

Date of Last Order: 27/07/2023

Date of Ruling: 27/07/2023

M. MNYUKWA, J

The applicant herein filed his application under certificate of urgency prayed for this court to enlarge time within which he can lodge his appeal out of time from the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu (the trial court) delivered against his favour.

The application was supported by the affidavit of the applicant. In opposing the application the respondent filed her counter affidavit. When the application was called for hearing, the applicant was represented by



Mr. Goodchance Lyimo whereas the respondent was represented by Daniel Shayo. By the Order of the Court. The application was argued orally.

In his affidavit filed in this Court supporting his chamber application, the applicant sworn under oath that, the decision in the Matrimonial Cause No 30 of 2020 was delivered on 16th December 2022, and immediately thereafter, that is on 19th December, 2022, he made formal application by writing a letter to the trial court requesting to be supplied with the certified copy of the Judgement, Decree and Proceedings for appeal purposes. He attached the said letter as Annexure DNS-2 to form part of his application.

The affidavit further deposed that, despite of the above formal request, still he was not supplied with the above documents. He wrote another letters dated 9th January 2022, 13th January 2023 and 20th January 2022 marked as Annexure DNS-3 which sought again the supply of the above mentioned document in vain. He added that, he was supplied with the requested documents on 30th January 2023 and acknowledge receipts of the document by a letter dated 31st January 2023 which he annexed as Annexure DNS-4 in his application.

The applicant stated that, he realized that he was out of time to appeal against the decision of the trial court as he got the necessary documents

which could assist him to file appeal out of the prescribed time provided by law.

Responding, the respondent filed a counter affidavit denied the applicant's assertion but he did not state in his counter affidavit as to when the copy of Judgement, Decree and Proceedings availed to them by the trial court.

During the hearing of the application, the applicant's counsel, argued to support the application. He quickly prayed to adopt the affidavit of the applicant to form part of his submission. He briefly submitted that, the reasons which made the applicant to delay to file appeal in this court within time is provided for under paragraphs 3, 4 and 5 of the applicant's affidavit which is failure by the trial court to supply copy of Judgement, Proceedings and Decree.

He retires his submission by stating that, immediately after being supplied with the necessary documents, the applicant lodged the present application. He remarked that, it is a position of law that if the copy of Judgment and Decree are belatedly supplied is a sufficient reason for extension of time. He supported his argument by referring the decision of this Court in **Zaina Mohamed Msangi v Lameck Lusonyekwa**, Misc, Land Case Application No 828 of 2018 which grants extension of time

since there was a delay to supply necessary documents to the applicant that could help him to lodge his appeal within time. He thus prayed the application to be allowed.

On his part, the counsel for respondent submitted that, after he had keenly gone through the applicant's affidavit and the submissions of the applicant's counsel, he was not opposing the application. Thus he join hands for the applicant's application to be granted.

The applicant did not re-join as there was nothing to re-join from the respondent's submissions.

Having gone through the submissions and records of the application, the key issue for consideration and determination is whether the applicant has advanced sufficient cause to suffice the grant of extension of time.

It is a well-known principle that, extension of time is a discretion of the court, and for the court to exercise such power it requires the applicant to put forward sufficient reason(s) for the delay. This position has been stated in a number of decisions including the case of **Benedict Mumello vs. Bank of Tanzania** Civil Appeal No. 12 of 2002 [2006] TZCA 12, where it was held that:



"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."

It has to be noted that, there is no clear definition of what amounts to sufficient cause. However, the Court of Appeal in the case of **Regional Manager Tanroads Kagera vs Ruaha Concrete Co. Ltd**, Civil Application No.96 of 2007 observed the following:

"What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case...."

Again, it is settled principle that, in the application of this nature, the applicant is also required to account for each day of delay for the prayer to extend time to be granted and that delay of even a single day should be accounted for. See the case of **Dar es Salaam City Council v S. Group Security Company Limited**, Civil Application No 234 of 2015.

Additionally, depending on the circumstances of each case, for the

have shown that there was a point of illegality that impedes justice as the illegality cannot be left to stand as it was stated in the case of **Principial Secretary Ministry of Defence and National Service v Devram Valambhia**, [1992] TLR 185 in which it was observed that, illegality is a reason for extension of time.

Coming now to our application at hand, the reason for the delay as stated by the applicant in paragraph 3, 4 and 5 of the affidavit in support of the application was that; he was not supplied with the copy of the judgment, decree and proceedings on time to enable him to file appeal within the prescribed time provided by law. He asserted that, having been dissatisfied with the judgment he started to make follow up of the copy of the judgment, decree and proceedings but he was not availed with the same on time until when the date of filling appeal according to the law expired. His assertions not strongly refuted by the respondent as she failed to counter prove in his affidavit as to when the said documents were availed to the parties. Lucky enough, during the hearing the respondent did not oppose the application at all.

I have keenly gone through the records, it is true that the applicant's was supplied with the necessary documents which could help him to file appeal one day before the time for filling appeal lapses. As it

is known, an appeal from the decision of the trial court was supposed to be filed within 45 days after the decision. As the decision was issued on 16th December 2022, the days of appeal lapsed on 30th January 2023, the day in which he was supplied with the copy of the Judgement, Proceedings and Decree.

It is evident that the applicant filed the present application on 13th February 2023 which is within 13 days after receiving the necessary documents that could help him to appeal to this Court. Considering the circumstances that the applicant delayed to get the necessary document for appeal purpose on time, I do not consider the period to be so inordinate to make a finding that the applicant delay to file his appeal promptly. I say so because his affidavit is very clear as to when he was supplied with the copy of the necessary documents that could help him to file an appeal within time. As it was rightly stated by the applicant's counsel that delayed to be supplied with the necessary documents if proved, is a sufficient reasons for extension of time.

Consequently, I grant the application and order the applicant to file his appeal within 21 days from the date of delivery of this Ruling. No orders as to costs since the parties were spouses.

Ordered accordingly.






M.MNYUKWA

JUDGE

27/07/2023

Court: Ruling delivered in the presence of the parties' counsel.


M.MNYUKWA

JUDGE

27/07/2023