

**IN THE HIGH COURT OF TANZANIA**  
**TEMEKE SUB-REGISTRY**  
**(ONE STOP JUDICIAL CENTRE)**  
**AT TEMEKE**  
**MISC. CIVIL APPLICATION NO. 52 OF 2022**

*(Arising from Matrimonial Appeal No. 16 of 2022 of Temeke District Court at the One Stop Judicial Centre).*

**OMARI HAMISI FARAJI..... APPLICANT**

**VERSUS**

**WAHIDA ELIESHI KYERIULOMI ..... RESPONDENT**

**RULING**

Date of last order: 18.07.2023

Date of Ruling: 25.07.2023

**OMARI, J.**

This Application is brought under section 14 of the Law of Limitation Act, Cap 89 R.E 2019 (the LLA). The Applicant prays for this court to extend the time so that he can be allowed to file an appeal out of time against the decision in Matrimonial Appeal No. 16 of 2022 delivered by Hon. Mpressa SRM of Temeke District Court at the One Stop Judicial Centre. As is required by law the Application is supported by the Affidavit of Omari Hamisi Faraji, the Applicant.



In this Application both parties were represented. The Applicant was represented by Jumanne Fokasi Semgomba learned advocate while the Respondent had the services of Elay Edward Nyamoga, also learned advocate. The Application was heard by way of written submissions.

In his submissions in support of the Application, the Applicant's advocate began by explaining to the court that the Applicant being dissatisfied with the judgment of the Primary Court of Kigamboni in Matrimonial Cause No.86 of 2021 appealed to the District Court of Temeke at the One Stop Judicial Center to oppose the judgment through Matrimonial Appeal No.16 of 2022, however, the first appellate court upheld the judgment of the trial court. Aggrieved by the said judgment he decided to file an Appeal however, he found himself out of time, so he decided to apply for extension of time in accordance with the law. He prayed for the Applicant's Affidavit be adopted and form part of his submissions.

Submitting on the reasons that occasioned his delay to file an appeal the Applicant stated that the first reason is that after being dissatisfied with the judgment of the district court, he decided to prefer an Appeal in this court believing that he is within the time limit for appeals to the High Court that is 60 days. Then the Applicant presented his intention in his advocate's offices.

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However according to the Law of Marriage Act, Cap 29 RE 2019 (the LMA) there were less than five days left and during that period his advocate had traveled outside the region for another case.

The Applicants counsel continued to submit that, upon the advocates return, an application was prepared but since time was not friendly and according to the LMA in section 80(2), the time to appeal is only 45 days and not 60 days as in other laws, then an application for extension of time was prepared in accordance with the law.

He claimed that there is misinterpretation and difference between the LMA and other laws, especially the Civil Procedure Code, Cap 33 RE 2019 (the CPC) not being used in matrimonial matters, that is why the Applicant failed to file an appeal within the time set in accordance with the LMA in section 80 ( 1) (the 1980 amendment to the LMA) which states that a person aggrieved by any decision or order of the resident magistrate's court, the district court or the primary court must appeal to either the district court or the High Court. Section 80(2) of the LMA states that an appeal to the High Court must be filed in the resident magistrate's court within 45 days.

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He went on to argue that the same time, the law of marriage act prevents, rejects or restricts any use of provisions in the CPC in relation to appeals under this law citing section 80(3) of the LMA.

Counsel contended that this is due to the Applicant not being conversant with the difference between the two laws. In the circumstance and in accordance with his submission also for his best interests the applicant prays that his application be allowed. He further stated that according to the grounds for his appeal that he is expected to submit after the Application for extension of time is allowed the Applicant has a great chance of winning considering that the spouses were married in the Islamic faith, so the division of their matrimonial assets should be in accordance to that faith.

The counsel for the Applicant explained further that the Application was prepared and completed on 06 October, 2022 so it was ready within 44 days, but as a matter of practice, the Affidavit should be signed by the Applicant, this delayed its filling in court within the time. Likewise, any application must be registered online and it should be confirmed whether it is accepted or not. So, the filling process through electronic system and waiting for the feedback turned out to be behind the time for 5 days. Another reason submitted by the applicant is that he did not plan to use any lawyer so he

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was ready to wait for his advocate believing that he would be there within the time.

On his part, the Respondent's counsel submitted based on three parts which are the introduction and the history of the case, the debate against the arguments before the court as well as the summaries and prayers for relief. The Respondent's advocate also prayed that the Respondent's Affidavit be adopted and be used as part of the submissions.

Submitting to oppose this Application, the Respondent's counsel began by explaining that the Applicant submitted his Application 54 days after the issuance of the judgment. He averred that the issue of granting an extension of time exists legally only if the Applicant shows that he has sufficient reasons for being late according to the requirements and procedures of the law as stated in section 14(1) of the LLLA. Therefore, in this matter, the issue is whether the Applicant has sufficient reasons to satisfy the court so as to be granted time to appeal. He contends that according to the documents submitted by the Applicant, in paragraph 5 of his Affidavit he explains to the court that one of the reasons for the delay was his advocate traveling to Dodoma to attend a case. He said the advocate attending other cases cannot be an obstacle for the Applicant to appeal. He further reasons that the

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Applicant has failed to prove that if his advocate actually traveled, he should have attached the tickets to show the gravity of his cause. He has also failed to state to what extent those courts had more power than this court because it is not clear whether he went to the primary court, the district court or which of the two courts. To augment his line of argument Counsel referred to section 110(1) of the Law of Evidence Act, Cap 6 RE 2022 (the TEA) and the case of **Beda Benedicto Mbaiza v. Zainab Ramadhani** Misc. Civil Application No. 1 of 2022 in which this court held that where the reason for delay is travel then if the mission for the travel is not proven then the ground is meritless.

The Respondent's counsel argued further that the issue of the advocate traveling to another case does not prevent the applicant or his advocate from observing the time limit rules as it is the advocate's responsibility to know how to carry out his duties without affecting the law and represent his client well. That 45 days is plenty of time for the applicant to fail to file his appeal even if his advocate had other cases to attend.

Counsel also objected the contention that by the time this Application was brought the Applicant was four days behind, that is, from the time the judgment was issued until completion of 45 days to appeal, hence this

argument has no basis to convince the court as the law in section 80(2) of the LMA is clear. He went on to add that it should also be remembered that ignorance of the law is not a defense nor is it a reason to allow infringement of the law.

He maintained that the court's judgment was delivered on 19 August, 2022 and the Applicant brought the Application on 11 October, 2022, the days lodge an appeal at the High Court are 45 days, so it is obvious that the Applicant was late to appeal and is out of time by 8 days and not 4 days as he told the court. Counsel then made reference the case of **Godfrey Joseph v. R**, Misc. Criminal Application No. 14 of 2022 wherein the court referred to the case of **Luswaki Village Council and Paresul Ole Shuaka v. Shibesh Abebe**, Civil Application No. 23 of 1997 (unreported) where in it was stated that:

*'...those who seek the aid of the law by instituting the proceedings in the court of law must file such proceedings within the period prescribed by the law...those who seek the protection of the law in the court of justice must demonstrate diligence.'*

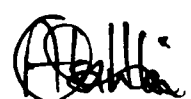
He further explained that the Applicant's defense and arguments are weak and do not meet the criteria for him to be granted an extension of time, so the Respondent requests this court to consider this reason to be invalid



because the applicant has shown negligence by failing to appeal within the legally required time. The Respondent's counsel also referred to the case of **Lyamuya Construction Company Limited V. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where the Court of Appeal gave guidance to the courts when determining applications for extension of time. Counsel also made reference to this court's decision in **Damari Watson Bijinja v. Innocent Sangano**, Misc. Civil Application No. 30 of 2021.

According to the Respondent's counsel, when one reads Applicant's Affidavit from the beginning to the end and his submissions, it is obvious that there is no sufficient reason for the delay, but he is in the mission of ensuring that he is delaying the distribution of assets because he lives in the house they earned together with the Respondent and continues to use the car, so this Application is baseless. Thus, the Respondent's advocate prayed that this court dismiss the said Application with costs and grant any other relief as may be considered by the court.

I have considered the parties Affidavits and submissions for and against the Application. This Application is brought under section 14 of the LLA which gives the court the power to grant extension of time for appeals or other





applications where reasonable or sufficient cause has been established and or demonstrated. With that in mind, there is only one issue for determination of this court in the present Application, that is whether the Applicant has presented a sufficient cause for this court to grant his Application.

It is trite law that a court has discretion to extend time however this can only be done where there is good cause and or sufficient reasons attributed to the delay by the person so applying for the extension. 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 he 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.

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- 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.

As the law requires the Applicant to also show good cause, let me start by saying that good cause has not been defined by our laws, however there are a number of case laws which explain what constitutes good cause. The case of **Tanga Cement Company Limited v. Jumanne D. Massanga and Amos Mwalwanda**, Civil application No. 6 of 2001 stated out the factors which amounts to a good cause. In this case it was stated that:

*'What amounts to sufficient cause has not been defined. From decided cases a number of facts have to be taken into account including whether or not the application has been brought promptly; the absence*



*of any explanation for delay, lack of diligence on the part of the applicant'*

That aside let me now look at the reasons and the Applicant's attempt to account for the delay. As rightly stated by the Applicant, the LMA requires that appeals from a district court to the High Court be filed within 45 days as provided for in section 80 (2) of the LMA, which provides that:

*An appeal to the district court or to the High Court shall be filed, respectively, in the primary court or in the district court within forty-five days of the decision or order against which the appeal is brought.*

The Applicant's reasons for the delay are four; the first is that there is a "confusion" and difference between the LMA and other laws specifically the CPC. The second reason is that the Applicant's advocate was attending other cases and the third is that this Application was filed electronically so the process of waiting for the response led to the delay. The last reason is that based on the grounds of appeal the Applicant is intending to file he has a great chance of success.

Starting with the first reason about the confusion and differences between the LMA and the CPC; the Applicant through counsel argued that the CPC gives a period of 60 days to appeal to the High Court while the LMA gives



only 45 days. The Respondent's contention which I am inclined to agree with is that the LMA has specified the number of days and that ignorance of the law is neither a reason nor a defense for breaking the law. That said, the parties are not at issue as to neither the date of judgment that is 19 August, 2022 nor the date of filing the Application that is 11 October, 2022. It is my view that the Applicant knowing that he is late for the 45 day limit opted to file this Application so what should be at issue is the reasons for the delay at this juncture since its clear that there is a delay.

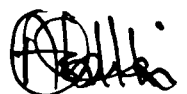
I find the Applicant counsel's reasoning that his client failed to distinguish between the LMA and CPC is rather frail, shabby and unconvincing more so when juxtaposed with the second reason that the advocate was attending to other cases which might even warrant a person to think the advocate could have been negligent in advising his client. Before I go to the second reason I wish to be persuaded by the words of this court in the case of **Gabriel Mwenisongole and 22 others v. Tanzanite Africa Limited**, Misc. Labor Application No.48 of 2021 where it was said:

*'this is a well-known common principle of law and for that reason, ignorance of the law can never amount to a good ground for extension of time.'*

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The second reason submitted by the Applicant's counsel is that the Applicant's advocate had traveled to attend another case. The Respondent disputing this, explained that the Applicant failed to present evidence to support his argument. In support strengthen his argument the Respondent cited section 110(1) of the TEA as well as the case of **Beda Benedicto Mbaiza v. Zainab Ramadhani** (supra).

The Applicant has explained that his advocate had traveled to attend another case, so he could not follow up on his appeal in time. It was expected for the Applicant to provide some evidence to show that the said advocate traveled and was actually attending a case(s). In paragraph 5 of his Affidavit the Applicant states that that on 28 October, 2022 when he sent his advocate a copy of the judgment so that he could prepare the grounds for the appeal, the said advocate told him he was traveling to Dodoma for the Land Case Number 2 of 2021 between **Abbas Muundo v. Jafari R. Maneno and Tarimu R. Maneno** and after returning he would travel to Kibiti for Criminal Case Number 11 of 2022 between **Republic v. Dominick Nyorobi Zuka** and that the advocate was expected to be back in the office on 05 October, 2022. Assuming that this is sufficient or good cause for enlargement of time, there is nothing attached to the said Affidavit that evidences any of the averments of the Applicant.



Another reason adduced by the Applicant is the contention that his Application was delayed due to the online filling process (electronic filling) and that he had to wait for the response. The Respondent has not submitted regarding this argument in his submissions. It is an undisputed fact that cases are filled through the electronic filing system. The Applicant has made utterances but has not attached any evidence of his utterances, it is not clear when he filed the Application, what was the cause for the delay in the electronic filing system and when he actually got the feedback. In any case this would be for the current Application and does not explain how he was not able to file the appeal on time.

In the end the Applicant submitted that from the reasons set out to be presented in his appeal if this Application is granted he has a great chance of succeeding. Again, the Respondent did not submit with regard to this. However, it is established through case law that great chances of success is not among the factors to show a good cause for extension of time to file an appeal. The Court of Appeal in **Marco M.S. Katabi v. Habib African Bank (T) LTD**, Civil Application No. 570 of 2020 quoting from its previous decisions in **Tanzania Posts & Telecommunications Corporation v. M/S H. S Henritta Supplies**[1997] T.L.R. 144, **M/S Regimanuel Gray (T) Ltd v. Mrs Mwajabu Mrisho Kitundu & 99 Others**, Civil Application



No. 420/17 of 2019 and **Evelina Leonard & 18 Others v. Phaniel Charles Nzenda**, Civil Application No. 427/11 of 2019 (both unreported), had this to say:

*'further, as argued by Mr. Tarimo, the applicant's contention that the intended appeal has great chance of success no longer constitutes good cause for delay to file an appeal. This is because the merit or not of an appeal can only be assessed after hearing both parties'*

Therefore, the Applicant cannot rely on this ground either as good cause for enlargement of time to file his appeal.

From the above elucidation it is clear that the Applicant has been unable to account for the delay and even for the unconvincing explanations given the Applicant has not supported his 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 is so ordered.

  
**A.A. OMARI**

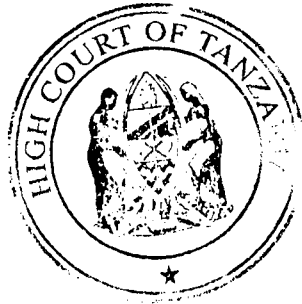
**JUDGE**

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Ruling delivered and dated 25<sup>th</sup> day of July, 2023.



**A.A. OMARI**

**JUDGE**

**25/07/2023**