

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY (ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 23 OF 2023

(Appeal from the decision of District Court of Temeke, at One Stop Judicial Centre,
Temeke in Misc. Civil Application No. 56 of 2023)

VIOLET NEEMA NESTORY IRAMU.....APPELLANT

VERSUS

ONESMO JOHN MARANDU.....RESPONDENT

JUDGMENT

08th February & 25th March, 2024

BARTHY, J.:

Displeased by the decision rendered by the District Court of Temeke, situated at the One Stop Judicial Centre in Temeke, in Misc. Civil Application No. 56 of 2023, the appellant has appealed to this court, citing the following grounds;

- 1. That, the honourable trial magistrate erred in law and in fact for failure to consider that the appellant stated valid reasons for the extension of time.*



2. *That, the honourable trial magistrate erred in law and in fact for failure to hold that the appellant raised the reasons of illegality which entitled grant of extension of time.*
3. *That, the honourable trial magistrate erred in law and in fact by basing his decision on extraneous issues.*
4. *That, the honourable trial magistrate erred in law and in fact for failure to appreciate the appellant was bonafide prosecuting the matter through revision hence the good reason for the extension of time.*

Wherefore, the appellant prays for this court to allow the appeal, set aside the ruling and orders of the District Court of Temeke at the Temeke One Stop Judicial Centre, award costs for the appeal, and grant any other relief deemed fit and just by this court.

During the hearing of this matter, the appellant was represented by Mr. Jonathan Mndeme, Esquire, while the respondent appeared in person. The hearing proceeded via oral submissions.

In support of the appeal, Mr. Mndeme, on behalf of the appellant, prayed to join the first with the fourth ground and the second with the third ground.

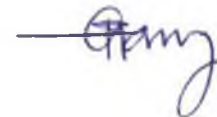


Arguing in favor of the second and third grounds, it was his submission that the trial magistrate failed to consider the issue of illegality and based its findings on extraneous matters not included in the decision. He insisted that the issue of illegality was raised in paragraph 11, and the court's decision was contrary to its precedents.

He made reference to the case of **Ramadhani Bakari & 95 Others v. Agakhan Hospital**, Misc. Civil Application No. 51 of 2022, page 4, on paragraph 2 where the court held that, once the issue of illegality is raised, the court is duty-bound to let the appellate court determine it.

On the first and fourth grounds, he argued that the appellant was not negligent, but rather misinformed regarding the proper legal recourse. He asserted that following the decision in matrimonial case No. 44 of 2021 from Kimara Primary Court, the appellant was erroneously advised by her advocate to pursue a revision instead of an appeal. Consequently, the matter was dismissed, leading the appellant to seek an extension of time to file her appeal beyond the deadline.

He stated that the advocate's error should not result in punishment for the appellant. To buttress his point, he referred the case of **Philemon Mangéke t/a Bukine Traders v. Geeso Hebron Bajuta**, Misc. Civil Application No. 374/02 of 2022, Court of Appeal of Tanzania, page 10,



paragraph 2 the court held that technical delay should be given different consideration. Hence, this appeal should be allowed without costs, and the decision of the District Court should be set aside.

In response to the appeal, the respondent stated that he does not contest the appeal, acknowledging that it stems from a matrimonial matter and the appellant was misadvised. The issue of technical delay was raised when execution was sought, and the respondent prayed for justice to be served.

In the rejoinder, Mr. Mndeme submitted that they are not aware of the execution proceedings, and since the respondent chose not to contest the appeal, it is left for the court to decide.

Before delving into the deliberations of the parties' submissions, it is essential to recount what transpired at the lower court for clarity and comprehension. Following the divorce petition filed by the respondent in Kimara Primary Court under Matrimonial Cause No. 44/2021, titled 'Talaka Na. 44/2021' (Matrimonial Cause), the trial court dissolved the marriage upon hearing both parties, issued the divorce decree, and ordered the division of matrimonial properties.

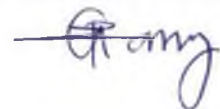


In that division, the appellant was awarded 85% of the Goba house and 15% of the Kibamba house. Conversely, the respondent was granted 15% of the Goba house and 85% of the Kibamba house. Custody of their children was granted to the appellant, and the respondent was ordered to provide maintenance amounting to Tsh 50,000/-

Aggrieved by the Primary Court decision, the appellant sought a revision through Misc, Civil Application No. 6 of 2021, which was struck out on 11/04/2022 by Hon. Mpressa. Subsequently, the appellant filed Misc, Civil Application No. 56 of 2022, praying for an extension of time to file an appeal. On 22/03/2023, Honorable Jacob, SRM, dismissed the said application for want of merit, leading to this appeal.

This court observes that although the respondent was present throughout the trial, he chose not to contest this appeal despite being afforded the right to be heard. However, the respondent's failure to argue the appeal does not guarantee the appellant an automatic victory; the court must satisfy itself that the grounds raised have merit.

In the present appeal, Mr. Mndeme firmly argued on the second and third grounds that the district court magistrate failed to consider the issue of illegality as a ground to grant the extension of time to appeal. Regarding the ground of illegality, it has been cited in several cases,



including the case of **Principal Secretary, Ministry of Defence and National Service v. Valambhia** [1992] TLR 185 where the court, among other things, held that if the point of illegality serves as a sufficient cause, it can be the basis for extending the time to appeal.

The point of illegality was mentioned in paragraph 11 of the appellant's affidavit in support of the chamber summons before the district court. However, based on the evidence presented to this court and before the district court, as shown in the records, even in the decision for application for extension of time to appeal, the appellant failed to specify the nature of the illegality that would warrant the court to grant an extension of time.

The point of illegality must be evident on the face of the records and easily identifiable upon reading the judgment, rather than requiring extensive examination. Even at this stage, the appellant has not identified the specific illegality, and the court cannot be tasked with uncovering it. Hence, these grounds are devoid of merit and dismissed.

Regarding the first and second grounds, Mr. Mndeme has raised the issue of technical delay and the decision that based on extraneous matter, arguing that the appellant was misguided by her advocate in filing a



revision instead of an appeal. Therefore, he argued that the appellant should not be penalized for this reason.

This court considers that the appellant was adequately represented during the trial by a professional, and therefore, ignorance cannot serve as a valid justification for technical delay. This principle was clearly stated in the case of **Selemani Kasembe Tambala v. The Commissioner General of Prisons & 2 others**, Civil Application No. 383/01 of 2020, Court of Appeal of Tanzania at Dar es Salaam it was held that,

"It is settled position that ignorance of the applicant or his advocate does not constitute good cause warranting extension of time".

The same stand was quoted in the case of **Kambona Charles (as Administrator of the estate of the late Charles Pangani) v. Elizabeth Charles**, Civil Application No. 529/17 of 2019, Court of Appeal of Tanzania, at Dar es Salaam, the court observed that;

"It is settled that a mistake made by a party's advocate through negligence or lack of diligence cannot constitute a ground for condonation of delay but a minor lapse committed in good faith can be ignored".



Also, in the case of **Tumsifu Elia Sawe v. Tommy Spades Limited**, Civil Case No. 362 of 1996 High Court, had this to say;

"Failure of party's advocate to check the law is not sufficient grounds for allowing an appeal out of time."

A similar fate was landed in the case of **Transport Equipment Ltd v. D. P Valambhia** (supra) where it was held that;

"What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time."

Thus, it is firmly established that errors committed by a party's advocate due to negligence or lack of diligence cannot be considered adequate grounds to justify an extension of time. These grounds are also without merit and therefore dismissed.

In conclusion, after careful examination, it is evident that the appellant has not provided any compelling reasons that would justify this court overturning the decision of the district court not granting an extension of time. Consequently, the appeal lacks merit and is therefore dismissed with no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 25th day of March, 2024.





G. N. BARTHY

JUDGE

Delivered in the presence of Mr. Mnguni Samadani learned advocate holding brief of Mr. Jonathan Mndeme for the appellant and the respondent in person.