

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TEMEKE SUB-REGISTRY**

**(ONE-STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MISC. CIVIL APPLICATION No. 10 OF 2023**

(Arising from PC Matrimonia Appeal No. 1 of 2019 from Matrimonial Cause No. 43 of  
2019 of Buguruni Primary Court)

**UWARIDI PETER MRINA ..... APPLICANT**

**VERSUS**

**SHABANI MOHAMED MWIJUMA ..... RESPONDENT**

**RULING**

*30<sup>th</sup> January & 2<sup>nd</sup> February, 2024*

**BARTHY, J.:**

The applicant, through chamber summons supported by an affidavit, moved this court under Section 25(1)(b) of the Magistrate Court Act [Cap11 R.E. 2019], seeking several reliefs, namely;

- 1. That, this honourable court be pleased to grant applicant's application for the extension of time to file appeal out of time to this honourable court.*
- 2. Cost for this application be borne by the respondent.*

3. *Any other reliefs/remedies this honourable court may deem fit to grant.*

The application was supported by the affidavit of the applicant, outlining reasons why this court should exercise its discretion to grant the application. The respondent contested the application through a counter affidavit.

The hearing was by way of written submissions due to consensus, the applicant had representation from the Legal and Human Rights Centre and Mr. Hashim Mziray, learned advocate, appeared for the respondent.

In the applicant's submission, as presented by Rose Charles Nyatega, learned advocate, it was outlined that the applicant, dissatisfied with the trial court's decision, appealed to the district court of Ilala (first appellate court). However, the appeal was dismissed, and the applicant sought to appeal again, but she was out of time. The initial application for an extension of time was struck out due to citing the wrong provision, and the applicant was granted 14 days to rectify and resubmit.

Ms. Nyatenga argued that the delay was beyond the applicant's control, attributing it to late receipt of the judgment copy and the initial citation error. She urged the court to prioritize justice over technicalities.

In response, Mr. Hashim Mziray contended that the marriage was dissolved by the trial court, now the matter was in the execution process, and the applicant's appeal lacked merit. He emphasized the applicant's failure to demonstrate a valid reason for the delay and requested the court to dismiss the matter.

The court notes that the applicant did not file a rejoinder submission to address the arguments raised by the respondent. Nonetheless, it is incumbent upon this court to assess the merits of the application based on the materials presented.

Having gone through the contending submissions, it is the duty of this court to determine as to whether the applicant has advanced any sufficient reason to warrant granting the extension of time to file an appeal out of time.

In determining whether the applicant has presented sufficient reason to warrant an extension of time, the court referred to Section 25(1)(b) of the Magistrates Courts' Act, Cap 11 R.E. 2019, which grants

discretion to the court for such extensions. For easy reference it is quoted below;

*In any other proceedings any party, if aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal there from to the High Court; and **the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.** (Emphasis is supplied).*

It follows therefore that, for this court to exercise its discretion to grant the extension of time, the applicant must advance good cause. The provision of the law quoted above does not state what amounts to good cause. Case laws have attempted to define what constitutes good cause. In the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that: -

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time*

*to provide the relevant material in order to move the Court to exercise its discretion"*

Hence, what constitutes good cause depends on the circumstance of each case. However, from decided cases, in order to determine whether the applicant has advanced good cause certain factors should be taken into consideration. In the case of **Wambele Mtumwa Shahame v. Mohamed Hamis** Civil Reference No. 8 of 2016, Court of Appeal at Dar es salaam (unreported), which the Court of Appeal while referring to the decision of **Bertha Bwire v Alex Maganga** Civil Reference No. 7 of 2016 that;

*(a) reasons for the delay,*

*(b) The length of the delay,*

*(c) Whether the applicant was diligent and the degree of prejudice to the respondent if time is extended.*

Other reasons to be considered are whether the applicant has accounted for each day of delay and whether there is any point of law of sufficient importance. See the decision in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young**

**Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

Guided by the above factors, I have keenly gone through the affidavit in support of the application, the applicant, seeks the court's indulgence to extend the time for filing an appeal, asserting that the delay was not attributable to her negligence, but rather to circumstances beyond her control. Ms. Rose Charles Nyatega, emphasized that the applicant, sought for extension of time to lodge her appeal, but it was struck out on technicalities, hence this application.

On the other hand, Mr. Hashim Mziray, representing the respondent, contends that the application lacks merit and should be rejected. He argues that the trial court had already dissolved the marriage, and since the matter is in the execution process, there is no need for the applicant to pursue an appeal. Mr. Mziray further contended that the applicant has failed to demonstrate any valid reason for the delay and points out that the initial application was struck out due to a citation error.

Gauging on the reasons for delay, the applicant stated her application for extension of time to the high court was struck out with the leave to re-file in order to cite proper provision of the law. The

record shows that the ruling of the court was delivered on 10<sup>th</sup> of March 2023. It was not made clear as to when the applicant was supplied with the copy of the ruling of the said court. However, the application before this court was lodged on 20/3/2023 about 10 days later from the decision of the high court.

I have taken into account the reason advanced by the applicant in his affidavit and expounded by his advocate that there was a technical delay which was caused by the time spent in filing and prosecuting Civil Appeal No. 36 of 2022. The position underscored in the case of **Denis T. Mkasa v. Farida Hamza & another**, Civil Application No. 407 of 2020 Court of Appeal of Tanzania at Mtwara (unreported) the Court of Appeal held that;

The law is settled that, technical delay constitutes sufficient cause for extension of time, if it is pleaded in the supporting affidavit and sufficient demonstrated by the applicant.

Also, in the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa**, Civil Application No. 520 of 2017 (2018) [TZCA] 291, where the Court of Appeal quoted with approval the case of **Fortunatus Marsha v. William Shija & another** [1997] TLR 154, the Court of Appeal held that, a prosecution of an incompetent appeal when made in

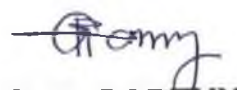
good faith and without negligence, ipso facto constitutes sufficient cause for extension of time. The similar stance was underscored in the case of **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported).

Despite the fact that the applicant did not account for each day of delay, by reason of technical delay the court finds it to be the sufficient cause. It acknowledged the applicant's reliance on legal aid services and determined that the delay was not due to negligence, and granting the application would not prejudice the respondent.

In the upshot, the applicant is granted an extension of 21 days to lodge her appeal, underscoring the importance of justice prevailing over technicalities. No order as to costs is issued.

It is so ordered.

**Dated at Dar es Salaam** this 31<sup>st</sup> of January, 2024.



**G. N. BARTHY**

**JUDGE**



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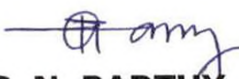
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In the upshot, the applicant is granted an extension of 21 days to lodge her appeal, underscoring the importance of justice prevailing over technicalities. No order as to costs is issued.

It is so ordered.

**Dated at Dar es Salaam** this 2<sup>nd</sup> February, 2024.



  
**G. N. BARTHY**  
**JUDGE**