

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB – REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 25545 OF 2023

(Originating from Matrimonial Cause No. 106 of 2022 at Temeke District Court One Stop Centre)

CHARLES JUMA CHARLES.....APPLICANT

VERSUS

BAHATI AMBYESILE MWAKASANGARESPONDENT

RULING

Last Order date: 5.02.2024

Ruling Date: 13. 02.2024

M. MNYUKWA, J.

This is an application for extension of time which was preferred by the applicant, Juma Charles Juma. In his chamber summons supported by the affidavit, the applicant prayed for this Court to extend time to lodge his appeal out of time. To support his application, the applicant stated in his affidavit that the delay to file appeal within time was not caused by sheer negligence. He thus deponed two reasons for this Court to consider to grant his prayer to extend time. The reasons for delay are reflected on paragraph 4 and 5 of his affidavit.

According to his affidavit, the first reason advanced by the applicant for his delay was due to financial constraints to pay legal services. The

other reason is the overwhelming chances of success of his appeal. In his affidavit, the applicant stated that the impugned decision sought to be challenged was delivered by Temeke District Court One Stop Judicial Centre on 26/05/2023, and he visited Legal and Human Right Centre seeking for legal assistance to appeal against the decision of the District Court One Stop Judicial Centre. Unfortunately he found that he was out of time, hence the present application.

As it was expected, the present application is strongly challenged by the respondent who filed the counter affidavit and strongly denied the applicant's reasons for extension of time.

On the date when the matter was scheduled for hearing, both parties were unrepresented and hearing was conducted by way of oral submissions.

In his submission in chief, the applicant briefly stated that he had financial constraints which resulted him to have failed to engage the lawyer to present his appeal. He submitted that he was unaware of the existence of the legal aid service and that he came to know the same through the District Resident Magistrate in charge. He went on that, he approached the Legal and Huma Right Cente for legal assistance and unfortunately he was informed that he was out of time. He thus prayed for his application to be granted.

NJ

Responding to the applicant's submissions, the respondent opposed the application through her counter affidavit. In her oral submission, she stated that, applicant is working for gain and therefore he is capable to engage the lawyer. She went on that the applicant delayed for more than 100 days and no sufficient reason is advanced for this court to grant the application. She therefore prayed the application not to be granted since the execution of the decree is ongoing.

Rejoining, the applicant admitted to have employed and works for gain but he contended that his salary is not enough to engage the lawyer. He thus prayed the application to be granted.

I have given careful consideration to the arguments for and against this application advanced by the applicant as well as the respondent. From their arguments, I find the central issue for consideration and determination is whether the applicant has established good cause to warrant this court to grant the extension of time sought.

In considering the application for extension of time it is settled that the decision to grant or not to grant an order for extension of time is within court's discretion and that discretion should be exercised judiciously and supported by logical, valid, authentic and sound reasoning. It all depends upon a party seeking an order to adduce sufficient reason(s) that prevented him from doing what he was supposed to do within time.

Among other things, in exercising its unfettered discretion to grant the extension of time, the court may consider different factors including the length of delay, the reasons for delay and the degree of prejudice that the respondent may suffer if the application is granted. (See the case of **Tanzania Revenue Authority v Tanga Transport Co. Ltd**, Consolodated Civil Applications No 4 of 2009 and 9 of 2008).

In determing the present application, I have keenly revisited the applicant's affidavit and going through his oral submissions to find out what transpires to this application. Going to the records, as it was also clearly stated by the applicant in his affidavit, the decision sought to be challenged was delivered on 26th May 2023 and the applicant filed the present application on 9th November, 2023, while the intended appeal was supposed to be filed within 45 days as it is provided for under section 80 of the Law of Marriage Act, **[Cap 29 R.E 2019]**, (the Act). The section provides that:

S. 80(1) - Any person aggrieved by any decision or order of a court of resident magistrate, a district court or a primary court in a matrimonial proceeding may appeal therefrom to the High Court.

80(2) - An appeal to the High Court shall be filed in the Magistrate's Court within 45 days of the decision against which the appeal is brought."



In our case at hand, the 45 days were ended sometimes on 12th July 2023. This means that the applicant delayed to file his appeal for more than 100 days from the date he was supposed to file his appeal.

As it is evidenced in the applicant's affidavit, I find what is claimed by the applicant is financial constraints to engage the lawyer to prepare and file his appeal within time. The applicant also claimed that he had overwhelming chances to succeed in his appeal and therefore, this court should grant the application.

Starting with the first reason, the applicant deponed in his affidavit that he failed to appeal within time because he had financial constraints and he was not aware about the legal aid service and that he came to know about it when he was out of time.

Going to the applicant's affidavit and his submission, the same is silent as to when he was aware about the provision of free legal aid services. As it is settled, the applicant is ought to account for each day of delay so as to know as to when he was aware of the legal aid services and he spent how many days to bring the present application. It is trite law that delay of even a single day has to be accounted for. This stand was taken by the Court of Appeal, which I am bound to follow in the case of **Dar es Salaam City Council v Group Security Co. Ltd**, Civil



Application no 234 of 2015 CAT at Dar es Salaam where it was stated that:-

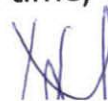
"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for each day of delay."

It is also settled position of law that failure to account for each day of delay would result in the dismissal of the application. This has been stated in the case of **Juma Shomari v Kabwere Mambo**, Civil Application No 330/17 of 2020 CAT at Dar es Salaam where it was held that:

"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."

As indicated earlier on, in paragraph 4 of his affidavit, the applicant stated that he had financial constraints which inhibit him to appeal within time. Admittedly, in his oral submissions he stated that he works for gain but that does not mean that he was capable to engage the lawyer to prepare his appeal.

It is true that financial constraints may constitute good cause if it is well established. Thus, it is not the hard and fast rule that financial constraints is a sufficient reason for extension of time, it depend on the



circumstances of each and every case. (See the case of **Yusuf Same and Another v Hadija Yusufu**, Civil Appeal No 1 of 2002).

In our case at hand, it is upon the applicant to substantiate that he was incapable to engage the lawyer and he made effort to find legal aid facilities from the legal aid provider to prepare his appeal. Unfortunately, the applicant's affidavit is silent to that effect as it is not known as to when he knew about the legal aid services. It is my humble view that, failure to know about the existence of the legal aid provider is not a defence. For that reason, I don't find if the applicant has successfully substantiate financial constraints as a good reason for this court to extend time to file his appeal out of time.

Turning now to the second reason advanced by the applicant that he had overwhelming chances of success, it is settled that the overwhelming chances can only be assessed when the appeal is heard, after hearing the arguments of both parties. At this juncture, it is very hard to know the overwhelming chances of success of the intended appeal. In **Tanzania Posts & Telecommunications Corporation v M/S H.S. Honitta Supplies** (1997) TLR 141 when the issue of overwhelming chances of success of appeal was raised in his decision, Lubuva, JA had this to say:



"It is however relevant at this juncture to reflect that this Court has on numerous occasions taken the view that the chances of success of an intended appeal though a relevant factor in certain situations, it can only meaningfully be assessed later on appeal after hearing arguments from both parties."

On my part, being guided by the above authority, I fully subscribe on it and I find that the applicant's reason of overwhelming chances of success of appeal lacks merit and unfounded since the overwhelming chances of success is determined when the application for extension of time is granted and not at this juncture.

Since the applicant failed to show a good cause and failed to account for each day of delay, this court cannot exercise its discretionary power to grant an extension of time to applicant. Thus, this application fails.

In the final result, I find the Misc. Civil Application No. 25545 of 2023 is devoid of merit, and it is hereby dismissed.

It is so ordered.




M. MNYUKWA
JUDGE
13/02/2024

Court: Ruling delivered on 13/02/2024 in the presence of the parties.


M. MNYUKWA
JUDGE
13/02/2024