

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

TEMEKE HIGH COURT SUB – REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

CIVIL APPEAL NO. 26541 OF 2023

(Originating from Miscellaneous Civil Application No 52 of 2023 at Temeke District Court One Stop Centre)

KHALFAN ALLY KIMBEAPPELLANT

VERSUS

FATUMA ALLYRESPONDENT

JUDGMENT

*Last order: 12.02.2024
Ruling date: 22.02.2024*

M. MNYUKWA, J.

Before me is an appeal originated from an application for enlargement of time within which to lodge an appeal to the District Court against the decision delivered by the primary court. The appellant advanced only one ground of appeal to wit:

- 1. That the District Court erred in law and fact for denying the appellant extension of time to appeal out of time against the decision of the primary court of Ukonga in Matrimonial Cause No 641 of 2022 without considering that the appellant had sufficient reason to warrant extension of time.*



As usual, along with the foregoing ground of appeal, the appellant prayed for appeal to be allowed, the Ruling of the District Court be quashed and revised, appellant be allowed to file his appeal to the District Court out of time and any other relief this Court may deem fit and just to grant.

The facts gathered in the available record shows that the respondent instituted a claim in the primary court (trial court) against the appellant in Matrimonial Cause No 641 of 2022. After hearing both parties, the trial court held that, parties lived under presumption of marriage hence invoked the provision of section 160 (2) of the Law of Marriage Act, **[Cap 29 R.E 2019]** to recognize the relationship of the parties as married couple. The trial court proceeded to grant the relief. It ordered division of the assets acquired during the subsistence of the relationship. In its decision, the trial court ordered appellant to be given 70% of the value of the house at Chanika and respondent be given 30%.

The above decision did not amuse the appellant and hence initiated the move to challenge the decision of the trial court. As per the record, the impugned decision sought to be challenged by appellant was delivered on 19/8/2022 and his right to appeal within 45 days from the date of the decision was well explained to him. But, he knocked the door of the District Court on 20/4/2023 praying for extension of time to file appeal.

At the District Court, both parties got an opportunity to argue an application through written submissions. Unfortunately, appellant was not lucky since his application was denied for a reason that he failed to show sufficient cause which prevented him to file appeal within a statutory period provided by law.

Disgruntled with the decision of the District Court, he preferred the present appeal armed with only one ground of appeal. When the matter was called for hearing, both parties were unrepresented and they preferred to argue appeal by way of oral submissions.

Submitting first, the appellant was very brief. He contended that, he had shown good reason for the District Court to exercise its discretionary power to extend time. He went on that, he had good reason to challenge the decision of the trial court since the trial court divided his property and that he delayed to file appeal since he spent considerable time to find a lawyer. He thus prayed for the appeal to be allowed.

Contesting, the respondent was also very brief. She strongly opposed the appeal and argued that appellant failed to show good cause and the delay for more than 200 days to file appeal was unjustified that's why his application was not granted. She thus prayed the appeal not to be allowed as the appellant intends to appeal to block execution process.

Re-joining, the appellant had nothing new to add from his submission in chief.

I have given careful consideration to the arguments for and against advanced by both parties, the central issue for consideration and determination is whether the appeal is merited.

Before I embark to determine this appeal, I have to state on what has been raised by appellant in his submissions that he had good reason to challenge the decision of the trial court when appeal is allowed. Looking with an eye of caution, the above argument raised by appellant in his submissions is misconceived. He want this court to believe that he had overwhelming chances for his appeal to succeed.

Without much ado, I don't think if this is the right time to discuss the overwhelming chance of his appeal to succeed since the same can be determined if this appeal will be allowed and after his appeal being heard and determined by the District Court. At this juncture I find this submission is unfounded. (See the case of **Tanzania Posts & Telecommunications Corporation Vs. M/S H.S. Honitta Supplies** (1997) TLR 141).

Again, in his submissions appellant stated that trial court divided the property which belonged to him. With all due respect to appellant, it is my humble view that this issue can be best determined when appeal is allowed

where the District Court as the first appellate court will have an opportunity to analyse the evidence on record. Regrettably, this argument is misplaced.

Coming now to the gist of his ground of appeal, the appellant claimed that he had shown sufficient reason for his application for extension of time to be granted but the same was refused. He said that he had spent a considerable time to find a lawyer that's why he delayed, to file appeal within time.

I had time to go through the available record supplied to me only to find that he alleged to have delayed to file appeal within time since he was making follow-up to get a copy of Judgment. This is deposed in paragraph 10 and 11 of his affidavit filed in the District Court. Surprisingly, the appellant failed to state as to when he got a copy of Judgment so as to account a degree of delay and to prove that he was not sloppy or negligent.

The records bears testimony that, he initiated appeal processes when respondent filed an execution proceedings. This is seen in paragraph 13 and 14 of the appellant's affidavit filed in the District Court. Further to that, in elaborating sufficient cause for the application to be



granted in the District Court, appellant accounted for days of delay from 07/04/2023 to the date when he filed application.

Looking from the above, it is clear that the reason advanced by appellant at the District Court for extension of time was for searching of legal aid services and follow up of a copy of judgment.

The law is settled that the decision to grant or not grant an order of extension of time is within court's discretion and that discretion should be exercised judiciously supported by logical, valid, authentic and sound reasoning as 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.

In his ground of appeal and submissions to this court, appellant stated that he established good reason in the District Court but his application was denied. From the affidavit, it is clear that appellant failed to exhibit as to how he do follow-up to get a copy of Judgment because the records are silent to support his assertion. There is no correspondences which were gathered between him and the trial court to substantiate that he was making follow-up to get a copy of Judgment.

Surprisingly, the record is silent if he got a copy of Judgment some few days later after its delivery. This convinced me to believe respondent's

assertion that appellant unjustifiably delayed to file his appeal within time, and he initiated appeal processes after execution proceedings. This fact is also supported by his affidavit deposed in the District Court as it is reflected in paragraph 13, 14 and 15.

Further to that, appellant said that he searched for legal aid services that's why he delayed. As it was rightly said by the District Court, this assertion lacks proof since appellant's application for extension of time was drawn and filed by himself. Nothing to substantiate that he searched for legal services. For that reason, I find that appellant failed to show good cause in the District Court which deserved for his application to be dismissed.

It is also a trite position of law that for an application for extension of time to succeed, the applicant must account for each day of delay even if it is the delay of a single day. There are plethora of authorities discussed this position. (See for example 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 and **Bushiri Hasani vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 CAT).

It goes without say that appellant did not account for each day of delay. The District Court adjudged that appellant did not account for about

200 days of delays. This fact clearly seen from appellant's affidavit and submissions in District Court.

Consequently, I hold that appellant did not give sufficient reasons for District Court to exercise its unfettered discretion to extend time to file appeal out of time as prayed. I, therefore, proceed to dismiss the appeal and all prayers sought in the Memorandum of Appeal with no orders as to costs.

It is so ordered.


M.MNYUKWA

JUDGE

22/02/2024



Court: Ruling delivered on 22nd February 2023 in the presence of both parties


M.MNYUKWA

JUDGE

22/02/2024