

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM SUB REGISTRY**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 127 OF 2021**

(Originating from Matrimonial Appeal No. 24 of 2019 in the District Court of Ilala  
dated 21<sup>st</sup> May, 2020)

**SIFA YUSUPH MARTIN ..... APPLICANT**

**VERSUS**

**MWANGO IDD MARUZUKU ..... RESPONDENT**

**RULING**

Date of Last Order: 14/02/2024

Date of Ruling: 29/02/2024

**NGUNYALE, J.**

The applicant was aggrieved by the decision of the first appellate court in Matrimonial Appeal No. 24 of 2019 but for reason which will be weighed in this ruling he could not appeal on time. She is before the court by way of chamber summons under section 25 (b) of the **Magistrate Courts Act** Cap 11 R. E 2019 seeking the following orders; **one**, extension of time within which she can appeal out of time against

the judgment of the District Court of Ilala in Matrimonial Appeal No. 24 of 2019 delivered on 21<sup>st</sup> day of May 2020 and **two**, any other order (s) this court may deem fit and just to grant.

The application was supported by an affidavit dully sworn by the applicant on 15<sup>th</sup> February 2021. In her affidavit she deponed that she could not appeal on time because she was ill from 6<sup>th</sup> May 2020 where she faced difficulty in breathing. Initial she received treatment at Mwananyamala Hospital and late she was referred to Muhimbili National Hospital. At Muhimbili it was established that she was suffering from Hypertension and Bronchitis Asthma. She remained under medical observation from 6<sup>th</sup> May 2020 and she still attends clinic regularly at Muhimbili National Hospital. In her further averments she stated that currently her health has improved the fact which enabled her to seek legal assistance which enabled the filing of the present application through the pro bono service she obtained from Tanzania Women Lawyers Association (TAWLA).

The respondent did not file counter affidavit in which by necessary implication he does not resist the application.

Hearing of the application attracted the form of written submission in which the applicant was to file her submission in chief on or before 27<sup>th</sup>

November 2023 and the reply by the respondent on or before 11<sup>th</sup> December 2023 and rejoinder if any on or before 18<sup>th</sup> December, 2023. The applicant complied to the scheduling order and filed her submission in chief on 27<sup>th</sup> November, 2023 but the respondent never filed the same.

The applicant in her submission submitted that she was a party in Matrimonial Cause No. 35 of 2018 before Ilala Primary Court which was decided in her favour. The respondent herein preferred Matrimonial Appeal No. 24 of 2019 and the judgment was entered in favour of the respondent. she was dissatisfied with the judgment of the first appellate court thus she wished to appeal before this court. After she was aggrieved with the decision of the District Court of Ilala she started looking for legal assistance since she could not afford hiring an advocate. She went on to submit that on 6<sup>th</sup> May, 2020 the applicant started feeling ill and experience chest pain and difficulty breathing. She was taken to Mwananyamala Hospital where she was referred to Muhimbili National Hospital and it was seen that she was suffering from Hypertension and Bronchitis Asthma.

The applicant continued attending clinic at Muhimbili until February, 2021 when her health started to improve the fact which enabled her to

resume her search for legal assistance. She went to Mnazi mmoja law week exhibitions where it was established that time to appeal has lapsed. She concluded her submission by stating that as a lay person and alone, having gone through difficulties she could not foresee the delay to appeal. She believed that if the application is granted, she had an overwhelming chance of succeeding on appeal.

Having in mind the application by the applicant, the submission I find it pertinent to determine an issue whether the applicant has demonstrated sufficient cause for the grant of extension of time for her to appeal out of time. But before I determine the issue raised, I find it crucial to determine the effect of the respondent failure to file counter affidavit and submission in reply. In legal practice failure to file counter affidavit means the respondent will be precluded from challenging matters of fact in case he appears during hearing. He will only have a right to challenge matters of law only. This was the position in the case of **Finn Von Wurden Petersen & Another vs Arusha District Council**, Civil Application No. 562 of 2017 Court of Appeal of Tanzania sitting at Arusha. In the instant application it will be proper to say that the respondent who failed to file counter affidavit means he does not challenge the contents of the affidavit as ruled in another case of

**Yokobeti Simon Sanga versus Yohana Sanga**, Civil Application No. 1 of 2011.

In the other hand it was noted that the respondent did not comply to the scheduling orders of filing written submission as ordered by the court. Failure to file written submission is as good as failure to attend on the date of hearing. Failure to attend on the date of hearing is tantamount to failure to prosecute or defend one's case. In such a circumstance the court is entitled to proceed composing the ruling by considering only the affidavit and submission as filed by the applicant as I hereby do. The courts of records have insisted several times that failure to file submission is equivalent to failure to prosecute or defend one's case. This was the position in the case of **National Insurance Corporation (T) Ltd & Another versus Shengena Limited**, Civil Application No. 20 of 2007.

Guided by the discussion made above, the court has justification to proceed to determine the application basing on the affidavit and submission as filed by the applicant. Now I turn to determine the issue about the merit of the application.

Granting of extension of time for filing an appeal out of time is a discretionary power of the court. In the case of **Rev. Wilson**

**Kyakajumba versus Elias Ichwkeleza**, Misc. land application no. 17 of 2021 this court had said:

*"It is settled that an application for extension of time can only be granted upon the applicant adducing **good cause or sufficient reason(s) for delay.**" [emphasis added]*

What amounts to "good cause" is not defined. It is based on the discretion of the Court which in most cases depends on the circumstances of the case which are to be determined judiciously. Referring in **Tanga Cement Company limited versus Jumanne D. Masangwa & another**, civil application. No. 6 of 2001. the court said:

*"What amounts to sufficient cause has not been defined. From decided cases a number of factors have been taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."*

Also, in the **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), the Court expounded the following principles to be taken into consideration when considering extending time;

- 1. That, the applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence, and not apathy' negligence or sloppiness in the prosecution of the action that he intends to take*
- 4. If the Court feels that there are other reasons, such as the existence of a point o f law of sufficient importance, such as illegality o f the decision sought to be challenged."*

Now, taking into account the submissions and the affidavit by the applicant, the only reason for her delay is sickness. She stated that she started getting ill on 6<sup>th</sup> may 2020 which was before judgement at Ilala District court and the judgment was later delivered on 21<sup>st</sup> May 2020. In her affidavit the court is not told whether she was in court during deliverance of that judgement or not, when she received the copy of judgment but also when she exactly became aware of the law week and when she took step to Mnazi mmoja to look for legal assistance. It is the requirement of the law that an applicant for extension of time need to account for even a single day of delay. See **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007.

Furthermore, looking at the applicant's affidavit and its annexure, the applicant stated that, she first went to Mwananyamala hospital then she

was referred to Muhimbili National Hospital, it is unfortunate that no such referral has been attached to the application. Again, the medical chit attached is dated 2<sup>nd</sup> January 2021 on the upper side while at the bottom it is signed on 02<sup>nd</sup> January 2020. Also, the report indicates that the applicant was diagnosed sick on 05<sup>th</sup> May, 2020 while the applicant had stated that she fell sick from 6<sup>th</sup> May, 2020. Upon a careful screening of the affidavit averred by the applicant, the date when she recovered is not certain. The Medical report and the medical chits do not cover the whole period between 21<sup>st</sup> May, 2020 when the impugned judgment was delivered and the date of filing the present application as noted above. In short, the applicant has failed to account for each day of the delay which is mandatory in the application of this nature.

It is from those facts I find the applicant has not demonstrated sufficient cause for the delay because she has failed to account for each and every day of the delay. Consequently, the application lacks merit, it is hereby dismissed with costs. Order accordingly.

Dated at Dar es Salaam this 29<sup>th</sup> day of February, 2024.



D. P. Ngunyale  
**JUDGE**



Ruling delivered this 29<sup>th</sup> day of February 2024 in presence of the applicant in person.



D. P. Ngunyale

**JUDGE**

