

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
GEITA SUB-REGISTRY
AT GEITA

MISC APPLICATIONS NO. 9146 OF2024

*(Arising from Matrimonial Appeal No. 9 of 2023 in the District Court of Geita,
Originating from Matrimonial Cause No.4 of 2023 of Nyankumbu Primary Court)*

ANETH FREDRICKAPPLICANT

VERSUS

DERICK SENGARESPONDENT

RULING

Date of last Order: 17/05/2024

Date of Ruling: 10/06/2024

MWAKAPEJE, J.:

The Applicant herein seeks this court's leave to extend the time within which she could file her appeal out of the prescribed time. The application, which is *via* chamber summons supported by the Applicant's Affidavit sworn by Mr Pauline Michael, learned advocate, is made under section 25(b) of the Magistrate's Courts Act, Cap.11 R.E. 2019.

Briefly, the Applicant and Respondent were husband and wife until the Nyankumbu Primary Court irreparably broke down their marriage. Dissatisfied with the outcome, she appealed to the District Court of Geita,

which, in its decision on 23 February 2024, upheld the decision of the Primary Court. Aggrieved by the first appellate court's decision, she desired to appeal to this court, only to find that she was out of time.

The main reason for the delay in filing the appeal on time delay, as advanced by the Applicant in her affidavit, was non-appearance on the date set for judgment in Matrimonial Appeal No. 9 of 2023 and the technical challenges in the court's e-case management system. It was stated that the case was not marked decided in the system, making it impossible to retrieve the decision to enable them to appeal on time. Up to the time this application was filed in this Court, the status of their appeal in the first appellate court, despite being finalised, read pending in the system.

On the other hand, the Respondent, in his counter affidavit, sworn by Mr Erick Lutehanga, a learned advocate, contended that the Applicant's non-appearance on the date scheduled for judgment was occasioned by negligence on her part and that they had an alternative to filing their application on time despite technical challenges in the e-CMS.

When the Application came for a hearing on 17th May 2024, it was ordered to be disposed of by written submissions. Adhering to the court's scheduling order, the Applicant, under the care of Mr Pauline Michael, a

learned advocate, filed her submission in chief on 20th May 2024. In contrast, the Respondent did not comply with the order. This Court, considering the Respondent's noncompliance with the scheduling order as non-appearance and failure to prosecute his case (see the case of **Emakulata Tarimo vs Kapaya Doto** (Miscellaneous Civil Application No. 4673 of 2024) [2024] TZHC 1359), proceeded to determine the application accordingly.

In his submission, Mr Pauline adopted the contents of the affidavit and contended that the appellate magistrate failed to update the court case management system before the appeal filing deadline despite efforts to prompt the update. The system showed the appeal as pending, hindering the timely submission. He argued that the system needed to reflect "decided" to allow them to appeal to the High Court of Tanzania.

He further asserted that the delay in filing their appeal was attributed to technical issues within the case management system, preventing the submission of a new appeal while the previous one was marked as pending. Mr Pauline expressed uncertainty about whether the magistrate had updated the system. To bolster his argument for an extension of time, he cited the case of **Salvand K.A. Rwegasira vs. China Henan International**, Civil Reference No. 18 of 2006

(unreported) and **William Shija and Another vs. Fortunatus Masha** (1997) TLR 213 where extension of time was granted in cases of technical delays. In conclusion, Mr. Pauline prayed that the application be granted for them to proceed with the appeal.

From the foregoing, I am entrusted with assessing and determining whether the Applicant has satisfactorily demonstrated sufficient cause warranting an extension of time, as outlined within the confines of section 25(b) of the Magistrates Courts Act. The same explicitly provides that:

“ (a).....n/a.....

*(b) 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 therefrom 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 supplied]*

Derived from the verbiage of the aforementioned section, the Applicant ought to file his appeal to the High Court within 30 days from the date of the decision of the district court. In the present application, the decision of the first appellate court was delivered on 23rd February 2024, and the appeal was supposed to have been filed by 22nd March

2024. However, the same was not filed on time up to the time this application was lodged in this court on 25th April 2024.

Guidance in extending time has been provided in a number of decisions by the Court of Appeal. In the case of **Osward Masatu Mwizarubi vs Tanzania Fish Processing Ltd**, Civil Application No 13 of 2010 (Unreported), when referring in approval to the case of **Ratman vs Cumara Samy** (1965) 1 WLR 10, it was expressed that:

*"The rules of court must be obeyed, and **in order to justify a court extending the time during which some step in the procedure requires to be taken, there must be some material upon which the court can exercise its discretion.** If the law were otherwise, a party in breach would have an unqualified right to an extension of time, which would defeat the purpose of the rules, which is to provide a timetable for the conduct of litigation."* [Emphasis supplied].

In circumstances such as this, the Applicant has to provide good cause for the delay to enable the court to invoke its discretion. Further, in the said case, i.e., **Osward Masatu Mwizarubi vs Tanzania Fish Processing Ltd** (*supra*), it was observed 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.**"*

Moreover, in the case of **Yusufu Same & Another vs Hadija Yusufu** (Civil Appeal No. 1 of 2002) [2006] TZCA 141 (20 October 2006), it was expressly stated, on sufficient cause, that:

*".....it should be observed that sufficient cause should not be interpreted narrowly, but should be given a wider interpretation to encompass all reasons **or causes which are outside the Applicant's power to control or influence resulting in a delay in taking any necessary steps.**" [Emphasis Supplied]*

Guided the herein referred authorities, in the present application, the Applicant stated that she failed to appeal on time because she failed to retrieve appeal documents in the e-CMS to enable her appeal, as evidenced in annexure ML1, which is the extract of the judicial e-CMS case status, which still reads pending. As stated by Mr Pauline, the delay was occasioned by a technical problem on the party of the judiciary e-CMS, which was over and above the Applicant's power to overcome. In the circumstances and since the status of the case was to indicate to have been decided then to move to the next step, I do not agree with Mr Erick in his counter affidavit that there was an alternative apart from sorting out technical issues.

In light of the extenuating circumstances present, it is evident that the delay in the appeal process was beyond the Applicant's control and

specifically, a technical malfunction occurred within the court's electronic Case Management System (e-CMS), resulting in a delay. This Court acknowledges the potential impact of such a delay on the Applicant's ability to exercise her right to appeal within time. To me, this reason for the delay advanced by the Applicant in this application, and it being technical, is a good cause and justifiable for this Court to exercise its discretion.

Before concluding, however, it is important to acknowledge the commendable efforts of the judicial technical team in facilitating the use of technology to administer justice in a timely manner in conformity with the vision and mission of the Judiciary of Tanzania. Nevertheless, it is imperative that the technical issues within the e-CMS are resolved promptly to ensure the seamless administration of justice in both present and future proceedings.

That said and done, while recognising the importance of fair hearing and delivery of justice, and in order to mitigate any undue prejudice caused by circumstances beyond the Applicant's control, it is essential that she is afforded the opportunity to present her case without hindrance. As was stated in the case of **Zanzibar Shipping Corporation vs Mkunazini General Traders**, Civil Application No.3 of 2011

(unreported), there is a need for achieving substantive justice which requires the parties be given the opportunity to litigate their rights to a conclusive end; therefore this application for an extension of time to file the appeal out of time is hereby granted. The Applicant is directed to file his appeal within 21 days from the date of delivery of this order. I make no order as to cost.

It is so ordered.

DELIVERED at **GEITA** this 10th June 2024.



G.V. MWAKAPEJE
JUDGE

This Ruling is delivered this 10th day of June 2024 in the presence of Mr Pauline Michael, Advocate for the Applicant, holding the brief of Mr Erick Lutehanga, learned to advocate for the Respondent.



G.V. MWAKAPEJE
JUDGE