

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 4144 OF 2024

*(Arising from the Matrimonial Appeal No. 103 of 2023 at the District Court of Temeke, at
One Stop Centre-Temeke)*

FADHILI RAMADHANI MUZZO.....APPLICANT

VERSUS

MARIAM ABUBAKAR HASSAN.....RESPONDENT

RULING

09th May & 10th June, 2024

BARTHY, J.:

The applicant by way of chamber summons supported by affidavit prayed to this court for the following orders;

- 1. That the Honourable Court be pleased to extend time within which to file petition of appeal against the whole of the said judgment and decree in Matrimonial Appeal. 103 of 2023 delivered on 09th day of June, 2023*
- 2. Any other reliefs that the Honourable Court deems fit to grant.*



This application was made under section 14(1) of the Law of Limitation Act, Cap 89, R.E 2002, and section 95 of the Civil Procedure Code, Cap 33, R.E 2019, and is supported by the affidavit of Fadhil Ramadhan Muzzo. The application is contested by the respondent through a counter affidavit.

The hearing of this matter was conducted through written submissions, as agreed upon by both parties.

The applicant's submission, made through Nyasebwa Law Chamber, states that he was the appellant in Matrimonial Appeal No. 103 of 2023, in which the judgment was delivered on 9th June 2023 by Honourable Mpressa, SRM. The applicant contends that he was provided with a copy of the judgment in November 2023, after the time to appeal had already lapsed. He asserts that the delay was due to the late supply of the judgment and the negligence of his advocate, despite his diligence in pursuing his appeal.

The applicant argues that the delay should not prevent him from exercising his right to appeal. He claims that he requested a copy of the judgment and decree, which was provided to his advocate in October 2023. However, his advocate failed to inform him promptly. He further states that the negligence of his advocate led to the delay, referencing



the case of **Felix Tumbo Kisima vs. Tanzania Telecommunication and Another**, Civil Application No. 1 of 1997, Court of Appeal (unreported). Despite his instructions, his advocate instead filed for a stay of execution in the District Court of Temeke before Hon. Jacob, SRM. Hence, making references the case of **Yusuph Same and Another vs. Hadija Yusuf**, Court of Appeal at Dar es Salaam, Civil Appeal No 1 of 2002.

In seeking recourse, the applicant initially filed an application before this court, assigned to Hon. Omari, J, which was withdrawn with leave to refile for being improperly filed, leading to the current application. He asserts that there are strong chances of success in his appeal if granted extension of time by this court.

He asserted that the district court upheld the Primary Court of Temeke's decision, resulting in an unfair distribution of two houses acquired during the marriage. He argues that the respondent will not suffer irreparable loss if the application is granted, while he will be rendered homeless as the execution process continues in the executing court. He concluded with the prayer to this court to grant his application.

The respondent's reply submission was made by Ms. Esther Nyalanda, learned advocate, who started by stating that the applicant served the respondent with the submission on 21st May 2024, three days




after the scheduled order of this court, which was required to be filed by 17th May 2024. She argued that the applicant has shifted blame to his advocate, despite being aware of the appeal timelines. Further pointed out that the application was made after a delay of almost 266 days.

Ms. Nyalanda emphasized that a delay, even for a single day, must be accounted for. She highlighted that the applicant, despite blaming his advocate, he was informed that the copy of the judgment was available in October 2023 but he filed this application in February 2024. She cited the case of **Uwege Webb Luhanga & Another vs. Mussa Mohamed Mnasi & Another** (Civil Appeal No. 218/2021) [2024] TZCA (2024) TanziLII, arguing that the applicant has not been truthful in accounting for each day of delay.

She insisted that the applicant should have made close follow up on his case and not left it entirely to his advocate. She cited the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambia** [1992] TLR 387, emphasizing that the court's discretion to grant an extension of time requires the applicant to demonstrate good cause or sufficient reasons.

In rejoinder, the applicant reiterated his earlier submissions, which I find unnecessary to reproduce.

A handwritten signature in blue ink, appearing to read 'G. Mny', is located at the end of the text.

Having reviewed the contending arguments, this court must determine whether the applicant has demonstrated sufficient cause to warrant the extension of time.

It is a general principle that granting an application for an extension of time is entirely at the court's discretion, exercised according to rules of reason and justice. In exercising this discretion, the court must consider if the applicant has presented sufficient reasons. In the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), the court outlined factors to be considered as follows;

- (a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

The position that has been stressed in numerous decisions, which I will not reproduce here. In the instant appeal, the appellant stated that



he was unable to obtain a copy of the judgment within the prescribed time, leading to this application for an extension of time.

Regarding the applicant's supporting affidavit, in paragraph 4, he deposed that he had requested for the copy of the judgment of the district court, which he received in November 2023. In paragraphs 7 and 13, he blamed his advocate for negligence and failure to act on his instructions.

Again, in paragraph 4, the applicant claims to have attached letters dated 20th September 2023 and 15th November 2023 as Annexure AP2 collectively. Additionally, in paragraph 5, he mentions an air ticket as Annexure AP3, but these documents are not attached to the court's records. The applicant seeks to prove to this court that he wrote a letter requesting a copy of the judgment but has failed to supply these letters as proof, which is contrary to section 110(1) of The Evidence Act, Cap 6, R.E 2022, which provides;

"Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

The provision of Section 80(1) and (2) of the Law of Marriage Act, Cap 29 R.E 2019 read together with G.N No. 487 published on 15/7/2022 (*which is the rectification of printing errors*) States clearly that;



(1) Any person aggrieved by any decision or order of the Primary Court, or by any decision or order of the district court, may appeal from that court respectively, to the district court or to the high court.

(2) an appeal to the district court or to the High court shall be filled respectively, in the primary court within forty-five days of the decision or order against which the appeal is brought.

[Emphasis is supplied].

The provision of law clearly stipulates that any appeal to the High Court must be filed in a magistrate's court or district court within 45 days of the decision or order against which the appeal is brought.

In this matter, the impugned judgment was delivered on 9th June 2023, and this application was filed online on 29th February 2024, resulting in a delay of eight months. In the applicant's submission, he has blamed his advocate for negligence. Regarding this assertion, the court, in the case of **Kambona Charles (as Administrator of the estate of the late Charles Pangani) vs. Elizabeth Charles**, Civil Application No. 529/17 of 2019, Court of Appeal of Tanzania, at Dar es Salaam, observed that;

"It is settled that a mistake made by a party's advocate through negligence or lack of diligence cannot constitute a



ground for condonation of delay but a minor lapse committed in good faith can be ignored”.

Despite the fact that the applicant is casting all the blame on his advocate, the said advocate has neither been identified in his affidavit nor mentioned in the submission in support of this application. Additionally, the applicant was required to obtain an affidavit from the said advocate to substantiate his claim.

It is an established principle that if an affidavit mentions another person, that person must also swear an affidavit. In the cases of **Said Salim Hamdun and 2 Others v. The Administrator General**, Miscellaneous Civil Application No. 267 of 2022, and **Deograsia Ramadhan Mtego v. Deodatus Rutangwerela**, Miscellaneous Civil Application No. 43 of 2020, the court held that statements made by another person without their affidavit are deemed hearsay evidence.

The applicant had failed to specify when he was supplied with the copy of the judgment by his advocate, making it impossible for this court to determine the extent of the delay and whether the applicant was able to account for each day of the delay. Furthermore, the applicant appeared to place all his reliance on his advocate, who seemed either unaware of what to do or acted without following the applicant's instructions, resulting



in the filing of an incorrect application that was subsequently withdrawn, followed by this current application.

It was evident that the applicant did not closely supervise or follow up on his case. It was stated that the counsel for the applicant appeared in the execution matter instead of following the applicant's instructions. This issue was addressed in the case of **Transport Equipment Ltd vs. DP Valambhia** [1993] T.L.R 91, where it was held that;

"What is glaring to the eye here is sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time."

The principle is that the responsibility for ensuring that legal proceedings are conducted appropriately lies both with the client and the advocate. If an advocate makes an error or fails to act, the client must demonstrate proactive efforts to rectify the situation and provide a compelling justification for any delays incurred.

This underscores the importance of diligent supervision and active involvement by clients in their legal matters. Clients cannot solely rely on their advocates without maintaining oversight and ensuring that their instructions are being followed. If an advocate neglects their duties, the client must take prompt action to address the issue and cannot simply

attribute delays to their advocate's inaction without presenting substantial proof and justification.

Thus, in the context of this application, the applicant's reliance on his advocate's negligence as the sole reason for the delay is insufficient. The applicant must show that he took appropriate steps to manage his case and account for the delay meticulously.

The applicant also stated that his advocate received a copy of the judgment from an unspecified source in November 2023, and that he subsequently filed the application on 29th of February, 2024. However, he had failed to account for each day of the delay and did not provide any evidence to substantiate his claim that he had requested the judgment copy and when it was actually provided to him.

The duty to account for each day of delay cannot be underestimated. Since no evidence was provided to this court to support the applicant's claims, the court finds that the applicant's assertion that the delay was caused solely by his advocate is insufficient grounds to extend the time for filing his appeal. The requirement to account for even a single day of delay is emphasized in the case of **Uswege Webb Luhanga & Another vs. Mussa Mohamed Mnasi & Another**, as cited by Ms. Nyalada.

The applicant failed to account for each day of the delay and exhibited negligence and sloppiness in not taking appropriate actions to


pursue his appeal. Therefore, I find that the applicant has not presented sufficient reasons for this court to exercise its discretion to grant the application.

As a result, I find that the application before this court lacks merit and should be dismissed. Considering the nature of the relationship between the parties, there will be no order as to costs.

It is so ordered.

Dated at Dar es Salaam this 10th of June, 2024.




G. N. BARTHY
JUDGE

Delivered in the presence of Applicant in person, Mr. Edwin Mushi hold brief for Ms. Loveness Ngowi Learned Advocate for the Applicant, Ms. Esther Nyalada Learned Advocate for the Respondent and RMA Ms. Bernadina Tayari.