

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**TEMEKE HIGH COURT SUB-REGISTRY**

**(ONE STOP JUDICIAL CENTRE)**

**AT TEMEKE**

**MISC. CIVIL APPLICATION NO. 5472 OF 2024**

*(Arising from the Judgement and Decree at the District Court of Temeke at One Stop Judicial Centre dated 5<sup>th</sup> December 2023 on Matrimonial Cause no. 191 of 2023)*

**ERICK AMANA ANCHIMBE.....APPLICANT**

**VERSUS**

**EDITH WESEJA BWANA .....RESPONDENT**

**RULING**

03/06/2024 & 19/06/2024

**SARWATT, J.;**

The applicant, Erick Amana Anchimbe, filed this application under section 14(1), read together with sections 19(2) and (3) of the Law of Limitation Act, Cap 89 R.E 2019, seeking an extension of time to file an appeal against the decision of the District Court of Temeke at One Stop Judicial Centre in Matrimonial Cause no 191 of 2023. The application was made by way of

chamber summons supported by the affidavits sworn by Godwin Antony Fissoo, Counsel for the applicant, Jackline Goodluck Mseja, and Esau Aduogo Ndege, who are both legal officers at RoarBar Attorneys. The respondent opposed the application and filed a counter affidavit affirmed by Nzaro Nuhu Kachenje, the respondent's counsel to that effect.

According to the affidavits sworn in support of this application, the reason advanced by the applicant for the delay in filing the intended appeal is the failure to obtain copies of the judgment and decree in time. The affidavit of the applicant counsel indicates in paragraphs 3.1, 3.2, 3.3, 3.4, 3.8, and 3.9 that the judgment was delivered on 5<sup>th</sup> December 2023 in the presence of Advocate Edina Mwakenja, who was holding brief for advocate Godwin Antony Fissoo. If they could manage to file the appeal timely, they ought to have filed it on or before 19<sup>th</sup> January 2024.

According to the counsel, advocate Edina did not give feedback about the Court's decision, and the copy of the judgment was not ready timely for the parties' collection. Under the circumstances they could not be aware of the content of the judgment. It was further averred that upon several follow-ups, they were able to obtain a certified copy of the judgment on 17<sup>th</sup> January 2024 without the decree, as they were told it was not ready. The

same was supplied on 23<sup>rd</sup> January 2023.

At the hearing of the present application, the applicant enjoyed the service of Godwin Antony Fissoo, learned counsel, while Advocate Nzaro Kachenje represented the respondent. With leave of the Court, the application was heard by way of written submissions.

In his submission in support of the application, Mr. Fissoo started by adopting the chamber summons and its supportive affidavit to be part of the submission. The learned counsel went on and provide that this Court is vested with discretionally power to extend time to file an appeal upon the applicant advancing good cause as enumerated in the case of **Badru Issa Badru v Omari Kilendu and Hashimu Rungwe t/a H. Rungwe Ltd**, Civil Application no.164 of 2016.

Addressing the issue of whether the applicant has advanced good cause to warrant this Court to exercise its discretionary power and extend time, Mr. Fissoo advanced that both parties agree that an appeal from the District Court to the High Court is within 45 days from the date of the decision. Thus, the appeal would have been filed in time if it had been filed by 19<sup>th</sup> January 2024. It was the counsel's contention that, From 20<sup>th</sup> January 2024 to 12<sup>th</sup>

March 2024, when the application was filed, only 24 days have lapsed and not 100 days as the respondent counsel indicated in his counter affidavit.

According to the applicant's counsel, they were absent in Court when the judgment was pronounced, and they were not explicitly informed of the content of the judgment by Advocate Edna, who was present in Court. Hence, they have been struggling to get a copy of the judgment without any success. His effort to peruse the case file also faced some challenges, as the case file was still in the hand of the presiding magistrate for composing typed judgment and decree, which barred the applicant from exercising his right of appeal, and the fact that advocate Edna did not swear an affidavit to counter this fact makes it unchallenged.

It was Mr. Fissoo's contention that the fact that the trial magistrate was composing the typed judgment and decree for a long time amounts to a good cause that this Court ought to exercise its discretionary power and extend time.

Additionally, he stated that they were issued with a copy of the judgment on 17<sup>th</sup> January 2024 and the decree on 23<sup>rd</sup> January 2024, and the fact that the applicant is a German citizen who was not present in Court, he could not exercise his right of appeal without being aware of the decision. On 23<sup>rd</sup>

January 2024, the applicant was sent a scanned copy of the judgment and decree. After reading it and having a serious discussion with his counsel on 7<sup>th</sup> February 2024, the applicant decided to appeal against the decision. Accounting further, the counsel stated on the 8<sup>th</sup> and 9<sup>th</sup> of February 2024, he prepared an application for condonation which was registered and scheduled for hearing on 11<sup>th</sup> March 2024.

The said application had to be withdrawn with leave to refile as the name of the applicant was wrongly captured in the electronic case management system. Following that, the present application was filed on 12<sup>th</sup> March 2024.

Submitting against the application, the respondent counsel started by adopting his counter affidavit in opposing the application to form part of the submission and went ahead and stated that, in the application for an extension of time, the applicant has to show sufficient cause and account for each day of delay. It was the respondent counsel's contention that the standard as set in the case of **Lyamuya Construction Company Limited Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 and **Wambele Mtumwa Shahame v Mohamed Hamis**, Civil Reference No. 8 of 2016, which set the conditions such as reason for the delay, length of delay and whether the

applicant was diligent and the degree of prejudice to the respondent if time is extended. According to Mr. Kachenje, the applicant has fallen short of the standard set in the above cases.

Further, the counsel cited the case of **Bushiri Hassan v Latifa Mashayo**, Civil Application no 7 of 2007, which provided that delay, even if it is for a single day must be accounted for and provided that since the judgment was delivered on 5<sup>th</sup> December 2023 then the notice of appeal ought to have been filed on 9<sup>th</sup> January 2024 and by filing it on 15<sup>th</sup> March 2024, the applicant was out of time for 100 days and has not indicated any sufficient reason nor justification for the delay. Additionally, the counsel stated that, the respondent counsel was the one who was solely responsible for discharging his duties for his client and the Court and not trying to shift the blame to someone else.

In rejoinder, the applicant reiterated what he submitted in chief and added that the 100 days provided by the respondent is an exaggeration so as to pinpoint that the applicant was negligent as the present application was filed on 12<sup>th</sup> March 2024 following the withdrawal of the previous application which was filed on 12<sup>th</sup> February 2024.

Having heard the viral submissions by the parties, the issue for

determination is whether the applicant adduced sufficient reasons to warrant this Court to grant an extension of time to file his intended appeal. It is undisputed by both parties that the judgment to be appealed against was delivered on 5<sup>th</sup> December 2023. According to section 2(2) of the Laws Revision (Rectification of Printing Errors) (The Law of Marriage Act [ Cap 29 R.E 2019] Notice, 2022, the applicant had 45 days of the decision to file his appeal. Thus the applicant ought to have filled his intended appeal on or before 18<sup>th</sup> January, 2024.

To begin my deliberation, it has to be emphasized that it is within the Court's discretion to extend time upon the party advancing sufficient reasons for his/her failure to file his appeal within the time prescribed by the law. However, in exercising this discretion on whether to grant an extension of time or not, the Court is required to exercise the discretion judicially and not arbitrarily, as rightly pointed out by the Court of Appeal of Tanzania at Dar es Salaam in the case of **Omary Shabani Nyambu v Dodoma Water and Sewerage Authority**, Civil Application no 146 of 2016.

In the present application, the applicant's counsel has averred in his affidavit that the reason for the applicant's failure to file the intended appeal on time is because of the inability to obtain a copy of the judgment and decree on

time. According to the applicant's counsel, the judgment was pronounced in the absence of the respondent and his counsel, who is a German citizen. His evidence during the trial was received through video conference. Due to their absence, they didn't know the content of the judgment as advocate Edna, who was holding his brief, didn't share the decision. After several follow-ups, they were able to obtain a copy of the judgment on 17<sup>th</sup> January 2024 and the decree on 23<sup>rd</sup> January 2024.

It should be noted that delay in obtaining copies of judgment and decree has been considered to be sufficient ground for extension of time in numerous cases such as **The Registered Trustees of the Marian Faith Healing Centre @wanamaombi v The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal no 64 of 2007, Court of Appeal at Tanzania at Dar es Salaam.

Copies of judgment and decree are essential documents for a party who intends to appeal as he needs to read the judgment, decree, and even the proceedings in order to formulate a sound appeal. Even though the delay in obtaining copies of the judgment amounts to sufficient cause to extend time, the applicant has to show that, from the date when the copies of the judgment were ready, there was no unnecessary delay in instituting the



appeal.

It is a known principle of the law that the applicant is required to account for each day of delay in filing the intended appeal as provided by The Court of Appeal of Tanzania in the case **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010. The Court provided for the guidelines on matters to be taken into consideration in determining whether to grant an extension of time by holding that;

*"(a) The applicant must account for all the periods 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."*

From the cited authority, for an application to be granted, among other

things, the applicant was required to account for each day of delay. In the present application, though the respondent advances that the applicant is late for 100 days, I don't think that view is correct, as my perusal of the electronic case management system(ecms) reveals that the applicant filed this application through Miscellaneous Civil Application No 3180/2024 on 19<sup>th</sup> February 2024 which was withdrawn on 11<sup>th</sup> March 2024 with the two days leave to refile. The present application was filed on 15<sup>th</sup> March 2024.

From 18<sup>th</sup> January 2024, which was his last day to file the intended appeal, to 19<sup>th</sup> February, when he filed his first application for extension of time, which was later on withdrawn with leave to refile, a total of 31 days had lapsed, thus the applicant was required to account for those days of delay. In affidavits supporting the application, it is indicated that they were supplied with a copy of the judgment on 17<sup>th</sup> January 2024 and a copy of the decree on 23<sup>rd</sup> January 2024. Despite the applicant's counsel allegation, the copy of the decree indicates that it was extracted on 5<sup>th</sup> January 2024. Thus, it goes without saying that, at the time when the decree was extracted, the judgment was also ready.

As far as the decree shows that it was extracted on 5<sup>th</sup> January 2024, the applicant counsel submission of a Court register, which shows that the

decree was collected on 23<sup>rd</sup> January, does not prove that it was ready on that date as the register indicates the date as to when it was collected and not when it was ready, therefore, as far as the decree shows that it was extracted on 5<sup>th</sup> January. This Court is satisfied that the judgment and decree were ready on that date, and the fact that it was collected on 23<sup>rd</sup> January shows some negligence. Therefore, this reason fails.

Since this Court is satisfied that the judgment and decree were ready on 5<sup>th</sup> January 2024 and the applicant filed his first application on 19<sup>th</sup> February 2024, advancing a reason which this Court has overruled, then it can correctly be said that there are no sufficient reasons which the applicant has advanced to warrant the Court to exercise its discretionary power to grant an extension of time to file the appeal. Subsequently, the application is hereby dismissed with no order as to costs.

**Dated at Dar es Salaam** this 19<sup>th</sup> day of June, 2024.



**S. S. SARWATT**

**JUDGE**

Delivered in the absence of both parties.

The right of appeal is fully explained.