

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. 3958 OF 2024

(Originating from the judgment and decree of the District Court at the District Court of Temeke at One Stop Judicial Centre in Matrimonial Appeal No. 44 of 2023)

PILI MFAUME TINGISHA.....APPLICANT

VERSUS

SULTAN MAULIDI SOMBA.....RESPONDENT

RULING

03/06/2024 & 24/06/2024

SARWATT, J.;

The applicant filed this application under section 25(1)(b) of the Magistrate's Courts Act and any other provision of the law, 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 Appeal No. 44 of 2023. The application

was made by way of Chamber summons supported by the affidavit sworn by the applicant, Pili Mfaume Tingisha. The respondent opposed the application and filed a counter affidavit to that effect.

According to the affidavit sworn in support of this application, the reason advanced by the applicant for the delay is the system malfunction, as she was given a reference number that was not working. The sworn affidavit of the applicant indicates in paragraphs 3, 4, 5, and 8 that the said decision was pronounced on 19th October 2023, and aggrieved by the decision, the applicant wanted to file an appeal which required first obtaining a reference number and on 16th November 2023, she was supplied with the reference No. 20230330000489139 but unfortunately the reference number didn't work on the judiciary electronic filing system as the system replied that the reference number does not exist.

Upon such a problem on 20th November 2023, she decided to write a letter to the Magistrate in charge of the District Court to report such a problem, but her letter was not replied. Following that, she decided to write another letter on 9th February 2024. According to the applicant, the delay was caused by a system malfunction, as she could not file the intended appeal without the reference number.

At the hearing of the present application, the applicant was presented by Advocate Hemed Nassoro and Advocate Khalid Mzee represented the respondent. With leave of the Court, the application was heard by way of written submissions.

In his submission, the applicant's counsel adopted the contents of an affidavit to form part of her submission and advanced that it is a settled principle of law that for an application for an extension of time to be granted, the applicant must advance good cause for the delay and account for each day of delay.

Submitting further, the applicant's counsel stated that it is within the discretion of the Court to extend time. However, that discretion must be exercised judiciously depending on the circumstance of each case and subject to the applicant advancing good cause. To support her assertion, the applicant cited the case of **Kalinga and Company Advocates v National Bank of Commerce** (2006) TLR 325, **Oswald Masatu Mwizarubi vs. Tanzania Fish Processing Ltd**, Civil Application No 13 of 2010, and the case **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, which provide for what constitutes a good or sufficient cause.

Additionally, the counsel provided that the cause of delay was stated under paragraphs 4, 5,6, and 7 of the affidavit supporting the application, which indicates that on 16th November 2024, she was issued with a reference number 20230330000489139 in order to be able to file the appeal in electronic filing system but unfortunate the system was not responding, which led her on 20th November 2023, to write a letter to the Resident Magistrate Incharge. This letter to date had not been answered. According to the counsel, the applicant wrote another letter on 9th February 2024, and the same had not been answered. The counsel prayed she prayed for the application to be granted.

On the respondent side, in his submission opposing the application, the counsel prayed for the application to be dismissed because it failed to fulfill the principles raised in the case of **Kalinga and Company Advocates v National Bank of Commerce** (2006) TLR 325 and **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, which require the applicant to account for each day of delay, that is, it must not be inordinate, and the applicant must show diligence in prosecution of intended action. According to respondent counsel, the applicant has failed to account for each

day of delay and failed to prove that the delay was ordinate or her diligence in prosecuting the matter.

On the applicant's allegation that she was issued with the reference number, which did not work, it was Mr. Mzee's contention that those are mere allegations without proof. Further, the learned counsel argued that since the applicant provided that she was issued with the reference number, that automatically means that the reference number was issued by another person who the applicant did not name. Thus, it will be impossible for the Court to determine the truthfulness of her allegation.

According to the learned counsel, the fact that the respondent mentioned another person in her affidavit, that other person ought to have sworn an affidavit as without it, it will be hearsay as it was held in the case of **Joram Biton Sanga vs District Executive Director of Momba and Other**, Misc. Civil Cause no 2 of 2022, when made reference to the case of **Elihaki Giliad Mbwambo vs Mary Mchome Mbwambo and Another**, Civil Application No. 449 of 2019. Furthermore, Mr. Mzee argued that the applicant's allegation that she wrote letters to the Resident Magistrate incharge is a mere allegation without proof. Thus, this Court should disregard it.

Additionally, he stated that the attached letters have no specific address of the applicant. Therefore, it will be impossible to respond to them. On another note, it was the counsel's contention that the contents of the said letters have nothing to do with the problem of the reference number not responding to the system, as the content of the letters shows that the applicant was requesting the upload of the file to the system which is contrary to her affidavit which indicates at paragraphs 4 and 5 that she wrote a letter complaining a reference number not to working in the system.

The counsel further referred the Court to the case of **Makori Wassaga v Joshua Mwaikambo and Another**, (1987) TLR 88, which provides a principle that a party is bound by his pleadings and added that, since the applicant annexures contradict the contents of paragraphs 4 and 5 of her affidavit, then the same should be disregarded.

Having heard the submissions of both parties, this Court is tasked to determine if the applicant had adduced sufficient reasons to warrant this Court to grant an extension of time to file her intended appeal.

Before I begin my deliberations, I would like to emphasize that it is within the Court's discretion to extend time upon the party advancing sufficient reasons for the failure to file an appeal within the time prescribed by the

law. However, in exercising this discretion on whether to grant an extension of time or not, Courts are required to exercise the discretion judiciously 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 case, it is an undisputed fact that the judgment to be appealed against was delivered on 19th October 2023, and since the decision emanates from the matrimonial appeal, according to section 2(2) of the Laws Revision (Rectification of Printing Errors) (The Law of Marriage Act [Cap 29 R.E 2019] Notice, the applicant had 45 days of the decision to file her appeal. It can be concluded that the applicant ought to have filed her intended appeal on or before 2nd December 2023.

Since the present application was filed on 28th February 2024, it can correctly be said that the applicant was late for 87 days.

It is a settled principle that, in order for the application for an extension of time to be granted, the applicant, among other things, must account for the period of delay. He must also show that the delay was inordinate and must show diligence in the prosecution of his intended appeal. These principles were enumerated in the case of **Lyamuya Construction Co. Ltd v. Board**

of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, where the Court provided for the condition for application to succeed, which are;

"(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."

In the present application, the applicant, in her affidavit, advanced that she failed to file the intended appeal on time because she was supplied with a reference number that could not work in the judiciary's electronic case management system. The adverse side strongly contested this point for various reasons. Firstly, those are mere allegations without proof. Secondly, he argued that the contents of the letters are contrary to what is sworn in the applicant's affidavit as the same indicates that the applicant was

complaining about the upload of the file in the electronic filing system, and thirdly, the same is hearsay evidence.

Regarding the assertion that the affidavit should be disregarded as it contains hearsay facts, I think this should not detain me much as in her affidavit, the applicant stated that she was given a reference number, a statement which connotes that it was not the information received from another person. This is a reported statement by the applicant on what had happened in the case electronic system, which shows the primary cause of delay in filing the intended appeal within time. Therefore, it can not be hearsay.

Despite the respondent's argument, the fact that the applicant wrote letters complaining about the issue of the reference number can be regarded as proof that she was having problems with the filing of the case in the electronic system. Additionally, since the applicant was unable to file her appeal until she was out of time, it can also be considered evidence that she was having problems with the reference number.

Regarding the claim that the letters contradict the affidavit, I do agree with the respondent's counsel, as in the letters, there is nowhere that the applicant was complaining that the reference number was not working.

However, what can be grasped from the applicant's letter of 20th November 2023 is that the applicant was complaining she could not obtain a reference number to file the intended appeal, as matrimonial appeal No. 44 of 2023 was not in the system.

The applicant's letter of 20th November 2023 proves that she was diligent in pursuing her right of appeal, as at that time, she was still within time to file her appeal, but the system malfunction obstructed her.

Basing on the reasons provided above, I find that the applicant advanced sufficient reason for this Court to extend time. The application is hereby granted. The applicant should file her appeal within 14 days from the date of extraction of the drawn order from this ruling. Given the nature of this application, I award no costs.



Dated at Dar es Salaam this 24th day of June, 2024.


S. S. SARWATT

JUDGE

Delivered in the presence of the respondent and Khalid Mzee advocate for the respondent.

The right of appeal is fully explained.