

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

**MISCELLANEOUS CIVIL APPLICATION NO. 10550 OF 2024**

*(Arising from the decision of the High Court of Moshi at Moshi  
dated 31<sup>st</sup> January 2023 in Matrimonial Cause no. 01 of 2023)*

**AMANDA JANE ELISIMBO NATAI.....APPLICANT**

***VERSUS***

**ELISIMBO SHADRACK NATAI.....RESPONDENT**

**RULING**

27<sup>th</sup> June, 2024.

**A.P. KILIMI, J.**

This ruling emanates from the application made by the applicant herein praying for this Court be pleased to grant extension of time to enable the applicant to file notice of appeal to the Court of appeal of Tanzania at Moshi against the decision of the High Court of Moshi at Moshi delivered on 31<sup>st</sup> January, 2024 before her ladyship Simfukwe, J.

The application is brought under section 11 of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and any other enabling provision of the law and supported by the affidavit of Bashir Ibrahim Mallya the learned Advocate duly instructed to represent the applicant. As per the affidavit attached is that; in this Court vide Matrimonial cause No. 1/2023 which ended on 31/01/2024 the applicant herein was the respondent as annexure 'AJE-1' indicates. On 8<sup>th</sup> February 2024, the

applicant wrote a letter 'AJE-2' to be supplied with copies of proceedings whereas on the same day the respondent herein filed a notice of appeal to Court of Appeal 'AJE-3'. On 21<sup>st</sup> February 2024 the respondent served the copy of the said notice to the applicant. The applicant believed that the respondent intention to appeal to Court of Appeal, hereinafter 'CAT' would continue thus did not bother to file the notice of appeal to CAT as he also wished to lodge a cross appeal against the said judgment. Sixty (60) days elapsed and the respondent did not serve the applicant with records of appeal instead on 2<sup>nd</sup> April 2024, the respondent chosed to withdraw the said notice of appeal 'AJE-4'. The applicant herein wishes also to appeal to CAT against the said judgment but found out that he was out of time.

When the matter come before me for necessary orders as to see whether there was a counter affidavit in reply to the filed application, Mr. Bashir Ibrahim Mallya learned advocate appeared to represent the applicant whereas Ms. Jamila Ilomo learned counsel appeared for the respondent.

Ms. Ilomo stated that she had no intention of filing a counter affidavit rather she was in support of the applicant's application thus conceded with the applicant application. On the other hand, Mr. Malya

rejoined that since the respondent did not object the application, he prayed the same to be granted.

I am aware, an application like this for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. For instance, the length of delay involved, the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties, and the need to balance the interests of a party on the said decision to be appealed for. (see; **Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd** (2006) TLR 235 and **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (unreported)).

I have considered the application and the reasons averred in the affidavit of the learned advocate for the applicant, and as granting an extension of time is vested within court discretion. I see even though the applicant letter 'AJE-2' did not disclose the intention of him appealing to CAT rather its purpose as quoted in the letter requested to be supplied with judgment, decree and proceedings on the same day of



delivering the judgment, in my view suffice to show that he was prompt intending to pursue his rights in the superior court.

I have also taken note that since the applicant was waiting for the respondent appeal to continue in the CAT but the respondent himself chose to withdraw from it, and since the applicant stated that he was waiting for such appeal to be carried on by the respondent which in turn made him to be out of time in filing his notice to appeal, and taking the interest of the opposite party who is supporting this application, in my considered view the above circumstances causes me to find that are sufficient reasons for me to grant the applicant extension of time to file his notice of appeal to CAT.

For the foregoing reasons, I find this application to be of merits and since the respondent has conceded, the applicant application is hereby granted with no order as to costs.

It is so ordered.

**DATED** at **MOSHI** this 27<sup>th</sup> day of June, 2024.



**A. P. KILIMI  
JUDGE**

**Court:** Ruling delivered today on 27<sup>th</sup> day of June, 2024 in the presence of Mr. Bashiri Mallya for applicant and Ms. Jamila Ilomo for the respondent. Parties themselves absent.

**Sgd: A. P. KILIMI  
JUDGE  
27/06/2024**