

**THE UNITED REPUBLIC OF TANZANIA**  
**(JUDICIARY)**  
**THE HIGH COURT**  
**(MUSOMA SUB REGISTRY AT MUSOMA)**

**Misc. CIVIL APPLICATION No. 5 OF 2023**

*(Arising from the District Court of Tarime at Tarime in Matrimonial Appeal*

*No. 10 of 2022; originating from the Primary Court of Tarime at*

*Nyamwaga in Matrimonial Cause No. 11 of 2022)*

**RHOBI ISAYA RYOBA ..... APPLICANT**

***Versus***

**ISAYA RYOBA ..... RESPONDENT**

**RULING**

**13.03.2024 & 14.03.2024**

**Mtulya, J.:**

**Mr. Isaya Ryoba** (the respondent) and **Mrs. Rhobi Isaya Ryoba** (the applicant) were husband and wife for more than thirty (30) years. However, in 2022, their matrimonial relationship had turned into a sour hence the respondent had approached the **Primary Court of Tarime at Nyamwaga** (the primary court) and filed a **Matrimonial Cause No. 11 of 2022** (the cause) praying for a divorce. The primary court, after hearing the parties, had resolved in favour of the respondent.

The decision of the primary court in the cause had aggrieved the applicant hence preferred **Matrimonial Appeal No. 10 of 2022** (the appeal) at the **District Court of Tarime at Tarime** (the district court) praying for the district court to quash the decision and set

aside proceedings of the primary court in the cause. However, the district court in the appeal had rejected the prayer and dismissed the appeal . The applicant was dissatisfied with the decision of the district court in the appeal and was positioned to protest the same at this court. The judgment of the district court was issued on 18<sup>th</sup> November 2022. The parties were informed on the right to appeal in thirty (30) days, if any of them was aggrieved by the decision.

As indicated, the applicant was dissatisfied with the decision of the district court in the appeal and on the 14<sup>th</sup> December 2022, she rushed to the district court to file **Misc. Matrimonial Appeal** (the matrimonial appeal) in order to comply with the provision of section 25(3) of the **Magistrates' Courts Act [Cap. 11 R.E 2019]**. However, the applicant's matrimonial appeal was turned down by **Judicial Statistics Dashboard System (JSDS) electronic Case Registration (e-CR)**. The reason displayed in the JSDS e-CR on 14<sup>th</sup> December 2022 shows that: *the matrimonial appeal should be filed in the High Court.*

The applicant had approached the district court officials for conversations on the science of JSDS e-CR and was informed that the system does not allow filing of appeals in the High Court via the district court for cases originated in primary court. The applicant was then advised to file physical appeal in a bundle of documents

originated from primary and district courts. Following failure of the system, rejection of the documents, and want of new bundle of documents for appeal purposes, the applicant had found herself out of time to file appeal in this court. In order to substantiate her narrations, the applicant had produced affidavit attached with two print-outs of the JSDS e-CR to display her unsuccessful attempts to lodge the appeal on 14<sup>th</sup> & 15<sup>th</sup> December 2022. The copies of the print-outs were attached in the affidavit as R-1 and R-2 in the instant application where the applicant is praying for enlargement of time to prefer an appeal out of time.

Yesterday morning, the applicant had hired and instructed **Mr. Jackson Marwa Ryoba**, learned counsel to appear and argue the application for enlargement of time to prefer an appeal in this court. According to Mr. Ryoba, the narrations of the applicant show the delay was caused by science within the Judiciary and the applicant cannot be blamed for the delay. In his opinion, the Court of Appeal (the Court) has called the delay of this nature as *technical delay* and normally applicants who descend under such species of the delay are granted enlargement of time to file their appeals out of time.

In order to persuade this court to resolve the application in favor of the applicant, Mr. Ryoba cited two (2) decisions of the Court in **Fortunatus Masha v. William Shija & Another** [1997] TLR 154

and **Yara Tanzania Limited v. D. B Shapriya & Co Limited**, Civil Application No. 498/16 of 2016. In the opinion of Mr. Ryoba, the applicant was vigilant in prosecuting her action and filed the matrimonial appeal within time, but science has declined her. According to him, granting enlargement of time is a discretion of this court and it may do so in the instant application.

The submission of Mr. Ryoba was bitterly contested by the respondent, who had appeared in person without any legal representation, contending that the applicant is not vigilant as she was aware of the decision of the district court since 18<sup>th</sup> November 2022, but had declined to file an appeal within thirty (30) days, which were pronounced by the district court for appeal purposes.

According to the respondent, the applicant must account on every day from 19<sup>th</sup> November 2022 to 18<sup>th</sup> December 2022 and register necessary materials to shows where she was in the whole period of thirty (30) days of appeal. In the opinion of the respondent, the applicant is negligent and negligence on part of applicants of enlargement of time has never been a good cause for purposes of enlargement of time to file appeals out of time.

I have perused the record of the instant application and found that the submissions of the parties are quietly correct on delivery date of the decision of the district court in the appeal, that is 18<sup>th</sup>

November 2022, and the right of appeal within thirty (30) days was well explained to the parties. Similarly, science in JSDS e-CR shows that on 14<sup>th</sup> & 15<sup>th</sup> of December 2022, the system had declined the applicant's appeal in two (2) times. The parties have no dispute on the two (2) indicated issues.

However, the applicant claims that the indicated science within the Judiciary of Tanzania had declined her matrimonial appeal, whereas the defendant thinks that the applicant is negligent as she waited until four (4) days before the end of thirty (30) days available for appeal purposes.

The issue before this court then is whether the applicant was negligent or sloppy in prosecuting her action. The law regulating applications for enlargement of time shows that applicants must produce good reasons to persuade courts to decide in their favour (see: **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010; **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and **Bariki Israel v. Republic**, Criminal Application No. 4 Of 2011).

The question on what constitutes good cause, had received a reply from the precedent of the Court in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, (supra) that:

*...good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant materials** in order to move the court to exercise its discretion.*

However, it is settled law at present, that negligence on part of applicant in prosecuting his action is not good cause for enlargement of time to file action out of time (see: **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91; **Umoja Garage v. National Bank of Commerce** [1997] TLR 109 (CA); and **Inspector Sadiki & Others v. Gerald Nkya** [1997] TLR 290).

In the instant dispute, the applicant had preferred her appeal within time on 14<sup>th</sup> December 2022 and had tried again on the following day, 15<sup>th</sup> December 2023. The applicant cannot be said to have been in fault or negligent. I think, the applicant was vigilant in following up the intended appeal in this court. The record shows that the applicant was enjoying her right to appeal within the provided thirty (30) days of preferring appeal after the decision of district court. She cannot be asked to account on every day of the delay within the indicated thirty (30) days.

The practice on accountability of every day of the delay applies only when applicants have delayed outside the realm of the provided time period of preferring an appeal. It is not applicable in days within which applicants can exercise and enjoy their right to appeal (see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010).

I am quietly aware that applicants for enlargement of time are discouraged to apply for enlargement of time as when and so wish (see: **Bank of Tanzania v. Saidi Malinda & 30 Others**, Civil Ref. 3 of 2014). However, I always take note on a general principle that every case is decided upon its peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019). Reading the present materials in the application, it is vivid that the applicant was prosecuting his action in good faith, which is also important factor in considering enlargement of time (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008).

In the instant application, the applicant cannot be blamed by failure of the science introduced in a developing nation like Tanzania. That is why our superior court, the Court of Appeal, in the



indicated precedent of **Fortunatus Masha v. William Shija & Another** (supra) has recognized this species of reasons and blessed them the practical name of *technical delay*. In the opinion of the Court, as displayed at page 155 of the Ruling, a distinction must be drawn between cases involving real delay and those in technical delay. According to the Court, appeals filed within time, but prevented by certain situations and find themselves incompetent or out of time, may be instituted again.

The thinking of the court was echoed, cited and approved by the same Court, at page 8 in the precedent of **Yara Tanzania Limited v. D. B Shapriya & Co Limited** (supra). In any case, the applicant is asking this court to cherish her right to access this court to dispute the decision of the district court in the appeal. In brief, the applicant is asking the practice available in article 13(6) a) of the **Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002]** (the Constitution), which is the mother law in this State. This court will always cherish provisions of the Constitution and directives of the Court. This application is hereby granted. The applicant is granted fourteen (14) days leave to file the intended appeal in this court from today in accordance to the law without any further delay.

I am conversant that, during hearing of the instant application, the respondent had raised the issue of gender in the applicant's



affidavit to the extent of saying that the affidavit is full of lies. In citing the lies, the respondent cited first paragraph in the affidavit which shows the applicant is: *an adult, Christian, Male, Tanzanian and resident of Tarime*. According to the respondent, the applicant is a female adult hence the affidavit may be struck out for want of competence.


In responding the raised issue, Mr. Ryoba submitted that the indication of one word *male* is just a typing error and cannot render the whole affidavit a nullity. In his opinion, the applicant has prepared and signed the affidavit at the verification clause to validate its contents hence this court may decline the prayer of the respondent.

This is a court of law and justice. It cannot be detained by the submissions of the parties. Since the enactment of section 3A(1) and 3B(1)(a)-(c) of the **Civil Procedure Code [Cap. 33 R.E. 2022]**, minor issues or technicalities, which do not go to the root of the matter, are declined in this court. Disputes are brought in this court to be resolved and must be resolved. This application has already been resolved in favor of the applicant. The issue of female or male gender in the applicant's affidavit, in my considered opinion, is minor and in any case does not prejudice the respondent.


In conclusions, I do not make any order related to costs. The reason is obvious that this contest concerns matrimonial issues and leave has been granted for the applicant to access this court to cherish the right of appeal and resolve their differences in this court.

It is so ordered.



  
F. H. Mtulya  
**Judge**  
14.03.2024

This Ruling was delivered in Chambers under the Seal of this court through teleconference attached in this court in the presence of the applicant's learned counsel, **Mr. Jackson Marwa Ryoba** and in the presence of the respondent, **Mr. Isaya Ryoba**.

  
F. H. Mtulya  
**Judge**  
14.03.2024