

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB – REGISTRY

AT MUSOMA

MISC. CIVIL APPLICATION NO. 5889 OF 2024

REF NO. 202403191000005889

*(Arising from the decision of the District Court of Serengeti in Matrimonial
Appeal No. 07 of 2022)*

BETWEEN

MARA NYAMHANGA APPLICANT

VERSUS

NYAMAHEMBA MARO RESPONDENT

RULING

28th February & 19th March, 2024

M. L. KOMBA, J.

The present application was filed by **Mara Nyamhanga** (the applicant), beseeching this court to grant him extension of time from which he can appeal against the decision of the District Court of Serengeti in Matrimonial Appeal No. 07 of 2022 which delivered on 22nd February, 2023 before **A. C. Mzalifu – SRM**. The application was filed by way of chamber summons supported by an affidavit sworn by the applicant himself. And his application was premised under Section 25 (1) (b) of the Magistrate's Court Act [CAP 11 R.E 2019] and Section 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019]. The respondent did not

stay idle, upon services, she filed a counter affidavit to contest application.

In order to sail our boat in a right wave, I find it pertinent, in brief, to narrate a background of this matter as it is portrayed in the affidavit of the applicant and the records of the application.

That, the respondent herein was among the two wives of the applicant. They celebrated their customary marriage in year 2000, and up to now they have blessed with seven issues but unfortunately two of them died. The parties herein were lived peaceful as a married couple for 22 years. In 2022, the matrimonial disputes arose among them which at the end it led the respondent to file Matrimonial Cause No. 37 of 2023 at Ngoreme Primary Court to seek a decree of divorce.

The decision of Ngoreme Primary Court was in favour of the respondent whereas the applicant was not agreed with it. He therefore appealed to the District Court of Serengeti in Matrimonial Appeal No. 07 of 2022, but again, the odds were against him. Still determined to pursue what he thinks was right for him, the applicant intended to appeal against the decision of the District Court of Serengeti, but he is left with no time, hence the present application.

In his affidavit the applicants registered some reasons which hinder him to appeal in time. Those reasons were;

1. His long-term serious sickness which needs immediate medical treatment from 04th July, 2021 and got medical referral to Musoma Government Hospital and got relief on March 2023 but his condition became bad again on 15th March 2023 where he decided to go to witchdoctor at Mwakitonya – Shinyanga until 15th May, 2023.
2. That, the applicant being a peasant who depend on agriculture and animal husbandry failed to sell his cows so as to get money for prosecution of his cases due to heavy rainfall on March and April 2023 that flooded his cows.
3. That, the applicant being a shareholder of CRDB Bank and businessman. He conducts his business regularly that makes him to move from one place to another and while proceed with prosecuting his case, he travelled for the sake of economic gains.
4. That, the applicant had the trip to Arusha to attend the 28th meeting of the CRDB Bank shareholders which held at Arusha International Conference Center (AICC) on 20th May, 2023.
5. That, the applicant's health condition became worse due to shock after being travelled to Arusha that cause the applicant's failure to

proceed with his affairs, hence he decided to go back to the witchdoctor.

6. That, the applicant is financially unfit due to the respondent to escape with his assets.

During the hearing of this application, both parties appeared solo, fended for themselves.

The applicant submitted that he was serving the conditional discharge sentence and he got an accident which injured his finger. He proceeded that his cows were taken away with floods and he failed to cross the river to recover them. He then was invited to AICC Arusha to attend the CRDB Shareholders meeting as he is among the shareholders. He then prayed his affidavit to be considered and his application be granted.

Responding, the respondent was of the submission that, the case was finalized in February 2023 and the applicant had 30 days to appeal. The river was flooded in year 2024 so the applicant has no explanation where he was in all these times. she prayed the court to consider his counter affidavit and dismiss the applicant's application.

In rejoinder, the applicant insisted that he was invited at Arusha to attend the meeting in that time, and now he is free to prosecute his appeal.

Considering the affidavits lodged and submissions advanced by both parties, the court has one duty to determine whether the applicant established the sufficient reasons to warrant him to be granted extension of time.

It is trite law that in order a person to succeed in the application of this nature, he has to furnish the court with the *good/sufficient* reasons for his/her delay. And again, it is trite law that the factors to be considered in determining the *good/sufficient* reasons depends on the nature and circumstances of each case. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

Yet again, it has been ruled out that sickness is sufficient cause which is beyond human control. See **Alasai Josia (suing by his Attorney Osca Sawuka vs Lotus Valley Limited)**, Civil Application No. 498/12 of 2019, CAT at Dar es Salaam (unreported).

In our case at hand, I found one of the reasons for delaying of the applicant is sickness. However, the applicant failed to prove to this court

about which kind of sickness he suffered from and how he was dealt with it. He did not mention he was suffered from which disease and he did not bring to court any document to show that he was attended at any hospital and whether he was given and condition pertaining his sickness.

In the case of **Pastory J. Bunonga vs Pius Tofiri**, Miscellaneous Land Application No. 12 of 2019 (unreported), Rumanyika, J. as he was then held:

*"Where it was on the balance of probabilities proved, **sickness has been good and sufficient ground for extension of time yes. But with all fairness the fact cannot be founded on mere allegations. There always must be proof by the applicant that he fell sick and for the reason of sickness he was reasonably prevented from taking the necessary step within the prescribed time.**"*

In the present application, the applicant failed to vividly prove that he was truly sick and that the same sickness prevented him from taking the necessary steps within prescribed time.

The applicant told this court that he had been travelled for the sake of economic gains and that on 20th May, 2023 he had the trip to Arusha to attend the 28th meeting of the CRDB Bank shareholders which held at Arusha International Conference Center (AICC) as he was among the shareholders.


To be frank, I wonder whether the applicant was serious with his case. I ask myself, if the applicant managed to travel for the sake of economic gains and that he managed to travel to Arusha where it is about 374 kms from Mugumu the place where he lives and failed to travel to the High Court of Musoma to lodge his case where it is about 121 kms, is it really that he was serious with his case.

In his submission he told this court that now he is free to prosecute his case. Does that mean the court should wait for everybody's free time to prosecute their case? What would be the meaning of our vision and mission **Timely and Accessible Justice for All**? Some jurists dared to say that court is not your mother who can give even those which are not asked for.

In the light of the above, I am of the humble opinion that the applicant has failed to demonstrate good and sufficient cause for the delay. Thus, I dismiss the application for want of merit.

It is so ordered.




M. L. KOMBA
Judge
19 March, 2024