

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISCELLANEOUS CIVIL APPLICATION NO. 9 OF 2014

(Arising from Kigoma Matrimonial Case No. 13 of 2014 and Original Matrimonial Case No. 34/2011 of Ujiji Primary Court at Kigoma)

EDWARD S/O GABRIEL KANEKEAPPLICANT

VERSUS

EMMACULATHA D/O CHARLESRESPONDENT

JUDGMENT

1st Oct & 19th Nov, 2014

RUMANYIKA, J

The application under section 25 (1) (b) of the Magistrate's court Act Cap 11 RE 2002 is for extension of time within which one to appeal against judgment and decree dated 24/12/2013 of the District Court – Kigoma.

Parties appear in person.

The application is supported with the affidavit of Edward Gabriel Kaneke whose contents it appears, the Applicant adopted entirely during the hearing.

Whereas the Applicant had nothing material to submit, the Respondent on her part submitted that she was not sure if really copy of the impugned judgment was supplied to him late in the day. That the Applicant's intention of appeal wasn't but an afterthought. She insisted.

It is trite law that time be extended upon the Applicant showing good and sufficient ground for the delay.

Looking at the affidavit supporting the application, the applicant advances only a ground. Namely delayed supply to him by the trial court of the copy of judgment (paras 3 – 4).

my Advocate Mr. Kabuguziwrote a letter of 20th day of December, 2013 applying to be supplied with a copy of judgment in time despite the application.....the District Court delayed to supply me with the documentthe cause to delaywas cause by the District Courtbeyond my control.....

Now the issue is whether delay of copy of the impugned judgment constitutes a sufficient ground upon which court to grant extension of time sought. Indeed it doesn't. The provisions of Section 38 (3) of the Land Disputes Court Cap 216 RE 2002

Act are impari matiria with section 25 (3) and (4) of the Magistrates' Court Act Cap 11 RE 2002.

As such district courts or district land and housing tribunals for that matter, are in event of appeals emanating from primary courts/ward tribunals to High Court duty bound to prepare records and dispatch them accordingly. It has never been duty of aggrieved parties to attach copies of the impugned judgments to their petitions/memoranda of appeals. As it may tantamount to supplying court a thing which infact it is possessed with already. See the case of Gregory Raphael V Pastory Rwehabula (2005) TLR 99.

Doors of the courts are always open only for those who take cognizance of the fact that period for them to take necessary steps is never open ended. Short of which there will be endless litigations. And therefore a clear abuse of the court process.

As said, the Applicant has assigned no sufficient reasons for the delay. As waiting for copy of the impugned judgment was uncalled for. Application dismissed with costs. Here and at the tribunal below.

R/A explained.

S.M. RUMANYIKA

JUDGE

17/11/2014

Delivered under my hand and seal of the court in chambers. This
19/11/2014. In the presence of the parties.

S.M.RUMANYIKA

JUDGE

19/11/2014