

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MATRIMONIAL CAUSE APPLICATION No. 27 OF 2019

(Arising from the High Court (Bukoba Registry) in Matrimonial Appeal No. 2 of 2017; Matrimonial Cause Appeal No. 3 of 2016 & Matrimonial Cause Application No. 1 of 2016 in the District Court of Karagwe at Kayanga and Matrimonial Cause No. 3 of 2016 in Bugene Primary Court)

ESTER SILIACUS ----- APPLICANT

Versus

SILIACUS MARCHORY ----- RESPONDENT

RULING

22/10/2020 & 18/11/2020

Mtulya, J.:

This is an omnibus application filed by Ester Siliacus (the Applicant) in this court seeking: first, enlargement of time within which to apply for certification on point of law to prefer an appeal to the Court of Appeal out of statutory time; and second, after granting the extension of time, this court to certify point of law worth consideration by the Court of Appeal, from the judgment of this court in **Matrimonial Cause Appeal No. 2 of 2017**.

The Application was filed on 21st June 2019 from a decision of this court delivered in the presence of both parties on 10th May 2019. Paragraph 3, 4, 7 & 9 of the Applicant's Affidavit duly sworn and signed by the Applicant produced four (4) reasons for the delay in

filing the Application, viz: first, court registry officer told the Applicant that copies of decree, judgment and proceedings were not yet prepared by the court; second, between 20th May 2019 and 31st May 2019, she was attending her sick child; third, after receipt of the documents, the Applicant went to her home residence in Karagwe District to take care of her children who depend on her; and finally, she was busy preventing execution of decision of **Bugene Primary Court in Matrimonial Cause No. 3 of 2016.**

When the Application was scheduled for hearing on 15th October 2020, both parties agreed to argue the Application by way of written submissions, which were complete as per scheduling order on 22nd October 2020. In her submission in support of the Application, the Applicant submitted a bulk document attached with a bundle of precedents, whereas the Respondent drafted two (2) pages submission.

In her submission, the Applicant argued all four reasons registered in her Affidavit. Firstly, she submitted that after the delivery of the judgment on 10th May 2019, she immediately made follow-up, but a court registry officer informed her that the certified copies of the documents were not ready for collection, but was advised to register her presence for the documents ten days later, on

20th May 2019; secondly, the Applicant was unable to appear in court between 20th May 2019 and 31st May 2019 as she was attending her sick child who was admitted at Nyakahanga Designated District Hospital; thirdly, the Applicant submitted that she went back to the court for collection of the documents on 3rd June 2019 and was supplied by the Deputy Registrar, and took steps to register notice of intention to appeal to the Court of Appeal on 7th June 2019, but could not file an appeal because of two reasons: first, she remained with only three days to file an application for certification on point of law and second, to rush to Karagwe District to take care of her children who depend on her.

Finally, the Applicant stated that she was busy and tied up in resisting execution of the decision of **Bugene Primary Court in Matrimonial Cause No. 3 of 2016**. The Applicant alleged that the Respondent was colluding with a Primary Court Magistrate, Rwengo Sub-village Chairman, Peoples' Militia and other human person in her place of residence. To substantiate his claim, the Applicant stated that she was issued by Application for Execution Summons on 10th June 2019 to appear in court on the next day, 11th June 2019. According to the Applicant, she had to resist the process until 14th

June 2019 and managed to file the present Application on 21st June 2019.

On the other hand, Mr. Siliacus Marchory (the Respondent) resisted the Application and briefly submitted that the Applicant admitted that he had three (3) clear days to prefer her Application for certification on point of law, but failed to exercise. The Respondent argued further that all that was stated by Applicant are afterthought unless proved by evidence and that in order to persuade this court to decide in her favour, she must abide by section 110 (1) of the **Evidence Act** [Cap. 6 R. E 2019].

On my part, I think, I will start with section 11 (1) of the **Appellate Jurisdiction Act** [Cap. 141 R. E. 2019] (the Act). This law allows this court to enlarge time period for filing notice of intention to appeal to the Court of Appeal. As the present dispute emanated from the decision of Bugene Primary Court, certification on point of law is to be applied and granted to access our superior court under section 5 (2) (c) of the Act. With extension of time section 11 (1) of the Act is silent on the reasons. However, borrowing a text from section 14 (1) of the **Law of Limitation Act** [Cap. 89 R.E. 2002], extension of time may be granted for applicants who produce *reasonable or sufficient cause*.

Interpretation of the words, *reasonable or sufficient cause*, from our superior court in the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, is that:

What constitutes good [reasonable or sufficient] 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 material** in order to move the court to exercise its discretion

(Emphasis supplied).

In the present Application, the Applicant has produced four reasons or causes for the delay, namely: the court registry officer informed the Applicant that necessary documents were not ready for supply on 10th May 2019; between 20th May 2019 and 31st May 2019, the Applicant was attending her sick child; after receipt of the documents, the Applicant went to her home residence in Karagwe District to take care of her children who depend on her; and finally, she was busy preventing execution of decision of **Bugene Primary Court in Matrimonial Cause No. 3 of 2016**. As there are no pigeon

holes on reasonable or sufficient cause, all these *may* be part of the good causes.

However, the directives of our superior court is that applicants for extension of time must be accountable in every gaps of delay to be granted extension of time. This is currently a certain and settled position of our precedents (see: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007). For instance, in the decision of **Sebastian Ndaula v. Grace Rwamafa** (supra), their Lordship noted on the gaps on days of delay and required the applicant in that application to account on every day of delay. To appreciate their statement, I will quote the statement in this Ruling:

*The applicant has suggested in his supporting affidavit that he has all along been pursuing his case both in the High Court, and in this Court. But, on a closer look, **there are some gaps which the applicant has not accounted for***

(Emphasis supplied).

The requirement of accountability on gaps of delay is important because it gives courts of law an opportunity to gauge whether the

registered materials in the gaps constitute a good cause. That is why categories of good cause have never been closed to allow courts to exercise their discretionary mandate to decide in favour of good causes or sufficient reasons. Apart from gauging the materials, the need of accountability on days is important because of the enactment in the provisions of time limitations.

The Court of Appeal in the decision of **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, stated that: *a delay of even a single day has to be accounted for*. The reasoning of such statement is found in the application in the following words:

...there would be no point of having rules prescribing periods within which certain steps have to be taken...

In the present Application, the Applicant has two gaps to register relevant materials, namely: first, the gap of three (3) days delay between when she received the necessary documents, 3rd June 2019 and 10th June 2019 when the time for filing the application ended; and second, the gap of seven (7) days between 14th June 2019, when the execution of the Bugene Primary Court was certain settled and 21st June 2019, when the Applicant filed the present Application. I understand at one point the Applicant stated that there

were only (3) days for her to file an application as she was busy with filing of notice of intention to appeal up to 7th June 2019.

Assuming that is correct, the Applicant claimed that in the three (3) days, she could not file the application because she rushed to Karagwe District to take care of her children who depend on her. Even if this court is persuaded by that reason, there is another gap which the Applicant remained silent of exactly what transpired on each day of delay, from 14th June 2019 to 21st June 2019.

Precedents of this court and our superior court require applicants for enlargement of time to register their application of extension of time immediately when they become aware of the delay and must support their speedy steps with good faith. Prompt action and good faith in filing applications may persuade this court to decide in favour of applicants. In a well celebrated precedent of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008, our superior court had a statement to make on promptly filing of applications in good faith:

It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact

*that he is out of time, **act very expeditiously** and that the **application has been brought in good faith***

(Emphasis supplied).

In the present Application, the Applicant had two gaps of three (3) days delay from 7th June 2019 to 10th June 2019 and seven (7) days from 14th June 2019 to 21st June 2019. It is unfortunate that in the first delay there is no any good explanations registered in this court. With the second gap the Applicant preferred to remain silent. This shows that the Applicant did not give this Application the weight it deserves or she was negligent. In any case, the first three (3) days delay have already received protest from the Respondent complaining that the Applicant had three (3) clear days to lodge the application within time required by the law. Again, there are seven (7) unaccountable days of delay.

In any case, courts of law do not entertain either unnecessary delays (see: **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305 and **Zawadi Msemakweli v. NMB PLC**, Civil Application No. 221/18 of 2018) or negligence (see: **Allan T. Materu v. Akiba Commercial Bank**, Civil Appeal No 114 of 2002 and **Issack Sebegele v. Tanzania Portland Cement Co. Ltd**, Civil Application

No. 25 of 2002) to be part of sufficient reasons to persuade this court to decide in favour of applicants in applications for extension of time.

In my considered opinion, I think, the Applicant in the present application did not register good causes as per established precedents of our superior court to act expeditiously and in good faith (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited** (supra); **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017; and **NBC Limited and Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

I understand at one point, the Applicant claimed illegality in the decision of this court in **Matrimonial Appeal No. 2 of 2017** and that there is contentious issues to be settled by our superior court. To substantiate his claim, the Applicant cited more than twenty (20) precedents and their associated explanations sailing from page 6 to 10 of her submission to persuade this court to invite its discretionary powers and decide in her favour. I understand in an omnibus application like the present one, it is the practice of this court to extend time and then proceed to see whether there is any point of law which attract attention of the Court of Appeal.

However, the Applicant is not clear as from paragraph 13 to 14 and page 5 to 10 of her Affidavit and submission respectively, on whether the tests of illegalities or contentious matters be invited in the present application. The practice of this court and Court of Appeal has been that for claim of illegality to be part of the good causes for extension of time, the claimed illegality must fulfil two important conditions, *viz*: first, existence of special circumstance (a point of law) that of sufficient importance (see: **The Bishop of the Roman Catholic Diocese of Tanga v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017, **Lyamuya Construction Company Ltd v. The Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, and **Samwel Munsuro v. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019); and second, such point of law (the illegality) must be obvious at a glance (see. **The Principal Secretary, Ministry of Defense and National Service v. Devram P. Valambia** [1992] TLR 387 and **Hanspaul Automechs Limited v. RSA Limited**, Civil Application No. 126/02 of 2018).

In the present Application, I glanced the Application, but could not find a special circumstances of sufficient importance to warrant intervention and correction by our superior court. On the other hand, I

will also decline to invite our superior court to determine an alleged contentious issue, which is already determined with authorities in place. This court was invited in **Matrimonial Appeal No. 2 of 2017** to determine one important issue on whether verbal application to withdrawal an appeal is fatal.

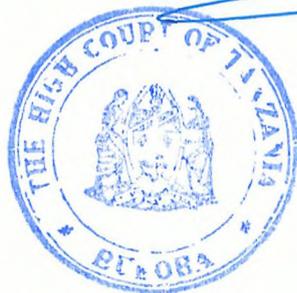
A well detailed discussion on the subject is found at page 6 to 10 of the Judgment of this court and at page 10 this court delivered its determination with reasoning based on the **Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules**, GN. No. 312 of 1964 and doctrine of estoppel. In my considered opinion, I do not see at glance either illegalities or contentious matter to warrant leave to the Applicant to access the Court of Appeal. This is not one of the fit cases to forward to our busy court in the Court of Appeal.

In the final analysis, I think the Applicant has failed to persuade this court to decide in her favor after declining to register relevant materials on accountability in days of delay from 7th June 2019 to 10th June 2019 and from 14th June 2019 to 21st June 2019, when the present application was filed in this court. Therefore, leave for enlargement of time to file an application for certification on point of law out of time is not granted. Similarly, the claimed illegality or

contentious issues is not obvious at glance to summon attention of our superior court, the Court of Appeal.

For the sake of justice and requirement of precedents in this court and our superior court, applications of this nature must have an end to allow parties to engage in other economic activities (see: **Zambia Tanzania Railway Authority v. Halikans & Another** (1979) LRT 21; **General Manager KCU (1990) Ltd v. Theobald Kainani**, Civil Application No. 9 of 2005; **Angella Amudo v. The Secretary General of E.A.C.**, Civil Application No. 4 of 2015; **Ezekiel Kapugi v. Abdallah Mombasa** Civil Application No. 135 of 2016; and **Wilfred Teikwa v. Deogratias Chrisostom**, Misc. Land Case Application No. 106 of 2016). This Application must be dismissed as I hereby do so. As the Application emanated from matrimonial cause and parties were wife and husband, I dismiss this Application without any order as to the costs. Each party to bear its own costs.

Ordered accordingly.




F. H. Mtulya

Judge

18/11/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant, Ester Siliacus and in the presence of the Respondent, Mr. Siliacus Merchory.


F. H. Mtulya

Judge
18/11/2020