

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 336 OF 2020

(Arising from the decision of this Court in PC Civil Appeal No.87 of 2019)

DANIEL MSELE MANYONYIAPPLICANT

VERSUS

PRISCA MNYAGA NYASURARESPONDENT

RULING

30th November and 14th December 2020

MASABO, J.:

Through a chamber summons, the applicant has moved this court under section 14(1) of the Law of Limitation Act [Cap 89 RE 2019]. His main prayer is for extension of time within which to apply for setting aside of a dismissal order of this court dated 5th November 2019. Supporting the application is an affidavit deposed by the applicant.

In this affidavit the applicant has apportioned the blame to the court. He has deposed that upon being disgruntled by the decision of the District Court of Temeke in Civil Appeal No. 87 of 2019, he filed an appeal in the same court as per the procedures pertaining to matrimonial appeals. Having filed the appeal, he was told to wait for notification on the transmission of his appeal to this court. Thereafter, he made several follows at Temeke district court and later at the Registry of this Court but he was still told to

wait for notification. Relying on this advice, he believed that he would be notified through a mobile phone number which he had provided at both registries. Acting on this, he went home and rested waiting for notification which never came. A long time passed as he was still waiting and he had waited for so long, in June 2020 he made an inquiry through his advocate only to be informed that the appeal had been dismissed for want of prosecution.

The Respondent sternly objected. In her counter affidavit she deponed that the assertions made by the applicant are devoid of merit as they are not substantiated. She deponed further that since the name of the registry officer who told the applicant to wait was not provided and she/he was not made to swear any affidavit to substantiate the applicant's assertion, all what has been said by the appellant is hearsay and devoid of any merit.

During the hearing, the Applicant represented by Mr. Charles Alex, learned advocate, reiterated the narration above and added that even after being informed that the matter had been dismissed, the respondent was not availed with the copy of the court order and as of today, the same has not been availed to him.

On her party, the respondent argued that the appellant was aware that the appeal was pending in this court as she informed him orally. She further argued that the applicant is abusing the court process for purpose of delay the realization of her decretal rights. She argued further that the applicant was

the one responsible to follow up his appeal but he negligently abandoned it. Therefore, he cannot be allowed to benefit from his negligence.

I have carefully considered the content of the affidavit, the counter affidavit as well as the submission rendered by both parties. An application to set aside a dismissal order is made within 30 days of the dismissal order. This duration may be extended under section 14(1) of the same Act upon the applicant demonstrating a good cause which is determined upon consideration of such factors as the duration of delay, whether the applicant has sufficiently accounted for the delay and whether he was diligent in pursuit of his right (see **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported)).

In the present case the total duration of delay is 8 months. Certainly, it is inordinate and inexcusable in the absence of a good explanation as to the reasons for delay. As stated above, the Applicant has apportioned the blame to the court. Although he has rendered no affidavit from the registry officer who allegedly mislead him, bearing the intricacies of the special procedure for appeal in matrimonial proceedings, and the circumstances of this case, and especially, the acrimonious relationship between the parties as brought to my attention in the course of hearing and its adverse impact on the issues of marriage, I have come to the conclusion that, it is in the broader interest of justice and of both parties that the application be allowed to enable

applicant to apply to have the appeal restored so that their dispute can be conclusively determined on merit.

Based on this sole reason, the application is allowed. This being a matrimonial proceeding, there will be no orders as to costs.

Dated at Dar es Salaam this 14th day of December 2020.




J.L. MASABO
JUDGE