

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISCELLANEOUS CIVIL APPLICATION NO.24 OF 2020

*(Arising from Matrimonial Appeal No.3 of 2018, in the District Court of Lindi and
Original from Matrimonial Cause No.18 of 2018 at Mtama Primary Court)*

MOZA ISSA.....APPLICANT

VERSUS

ABDALLAH HASSAN NGULI.....RESPONDENT

RULING

16 & 25 March, 2021

DYANSOBERA, J.:

The applicant, Moza Issa, has moved this court under section 14(1) of the Law of Limitation Act, Cap 89 [R.E. 2019] and section 96 of the Civil Procedure Code, Cap 33 [R.E. 2019] and any enabling provisions of the law to extent time within which to file her memorandum of appeal out of time.

The factual background leading to this application is that in 1978 the parties contracted their marriage in Islamic rite thus they lived as a husband and wife. In their lifetime and in the capacities or titles they hold the parties were not blessed with any issue rather they encountered several difficulties which led to the matrimonial petition

before the trial court. The reasons for the petition were desertion and abject poverty which initially paved a way for the applicant to seek for Islamic talak. After a full trial, the trial court rendered its decision which in one way or another affected the respondent thus he appealed in the District Court of Lindi at Lindi with four ground of appeal. The first appellate court heard the appeal and at last it delivered its decision which aggrieved the applicant. The applicant brought her first application for extension of time to lodge her appeal out of time. Unfortunately, her application was dismissed by this Court for failure to cite the substantive law and absence of good cause for delay in her affidavit. Thus, she brought this application again before this court.

When this application was called for hearing both parties appeared in person and were unrepresented. At first, the applicant made her submission orally to the effect that she applying for extension of time in which to lodge her appeal out of time. The applicant further submitted that she went to the advocate who prayed a delaying tactics since the advocate was indeed of the money which was not in her capacity. In addition, the applicant submitted that she had stated her reasons in her affidavit.

In his response the respondent submitted that he filed his counter affidavit but the applicant does not follow the law and they have come twice. The respondent insisted that the law shall take its course.

The applicant rejoined by submitting that the problem was with documents which were in English language and when she was come to the court, she was told that she cited the wrong the law. The applicant

went on and submitted that she is illiterate and not conversant with English language but the problem is with the advocates.

Surely, I have gone through the application of the applicant and their submissions thus, the following issues will guide this court to determine this application. First, whether this application has been brought under the proper laws of the land. Second, whether the applicant has given out the sufficient or reasonable cause for his delay to lodge her appeal on time.

Starting with the first issue of this appeal there is no doubt that this application is brought under the proper cited provisions of the laws which gives this court a discretionary power to extend time to appeal out of the prescribed time by the law. Section 14(1) of the Law of Limitation provides that:

“Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application”.

Also, section 95 of the Civil Procedure Code (supra) is about the inherent powers of the High Court which are invoked where necessary for the ends of justice or to prevent the abuse of the process of the court. In view of the above provision of the laws I see nothing which

can preclude this court to grant extension of time to appeal out of time to this court unless the applicant does not meet the criteria stated in section 14 (1) of the Law of Limitation Act (supra).

Coming to the second issue, the determination of this issue will depend on the factors enunciated by the Court which include cause of the delay, length of the delay, whether or not the applicant has accounted for the delay, degree of prejudice to the respondent and whether there is illegality or any issue of law of sufficient public importance in the decision sought to be challenged. These factors were well elaborated by the Court in various cases such as the case **Lyamuya Construction Co. Ltd. vs. Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, **Joel Silomba v. Republic**, Criminal Application No.5 of 2012 and **Sebastian Ndaula vs. Grace Rwamafa** (all unreported).


Being aware of the factors which will be considered by this court in exercising its discretionary powers of granting or not granting extension of time to file her appeal out of time. I have taken time to travel to the affidavit of the applicant especially at paragraph 9 and 11. The applicant stated at paragraph 9 of her affidavit that she lives in a remote area at Lindi urban, disabled and had financial difficulties. Furthermore, the applicant got legal assistant and the application for extension of time was filed in this court though it was strike out for wrong citation of the provision of the law and lacking good cause of her delay. Though the respondent strictly denied this application vide his counter affidavit and he further wanted her to prove it. Also, during the hearing the applicant gave this court another cause for her delay which was contributed by

her advocate who prayed delaying tactics. The tactics prayed by the said advocate was demand of money from the applicant which was not in her capacity.

In totality, the reasons for her delay are sufficient cause for this court to grant her an extension of time. In addition, the records show that on 17.5.2019 this court delivered the judgment on the appeal filed by the applicant though it was strike out due to the reason that it was misconceived. Also, the applicant did not end there but she strived by lodging her application to lodge her appeal out time, the application which was dismissed by this court on the ground that it was brought under the wrong provision of the law and there was no good cause for the delay which was not pinpointed. In view of those reasons and in conjunction with the fact of the applicant living in an abject poverty, living with disability, living in remote area and having economic hardships. In fact, for those circumstances facing the applicant would not carter her to pay the advocate the money he needed in preparing her application. In the light of those reasons by the applicant, I am convinced that her reasons for her delay are sufficient or good cause to grant her extension of time to file her appeal out of time. Thus, from the fore going the applicant is given twenty one (21) days to file her appeal from today.

It is so ordered.

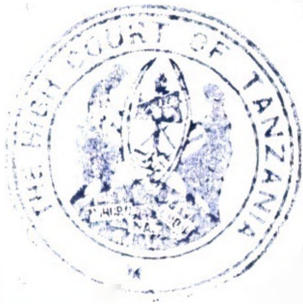



W.P. Dyansobera

Judge

25.03.2021

This ruling is delivered under my hand and the seal of this Court on this 25th day of March, 2021 in the presence of the applicant and respondent who have appeared in person and unrepresented.



A handwritten signature in black ink, appearing to read "W.P. Dyansobera", is written over the printed name.

W.P. Dyansobera

Judge

25.03.202