

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 264 OF 2021**

*(Arising from the decision of the District Court of Kinondoni in  
Matrimonial Cause No. 95 of 2020)*

**JANETH WILLIAM MWASAWALA ----- APPLICANT**

*VERSUS*

**SEBASTIAN JOSEPH BULLALY ----- RESPONDENT**

*Date of last Order: 13/08/2021*

*Date of Ruling: 22/10/2021*

**R U L I N G**

**MGONYA, J.**

The Applicant herein made this Application under **section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]**, seeking for the following orders:

- 1. That, this honorable Court maybe pleased to extend time within which an appeal can be filed out of time from the decision of the District Court of Kinondoni in Matrimonial case No. 95/ 2020 delivered on 15/04/2021 before Hon. Jacob RM.***

***2. Any other relief(s) this Honorable Court may deem fit and just to grant.***

Having the obligation to determine the application as filed by the Applicant. This matter was heard *Ex-parte* before this Honourable Court since the Respondent was served and decided not to appear. However, I have prudently gone through the Application, Counter Affidavit and submissions of the Applicant of which I do not intend to reproduce, and hereby determine as follows.

The Applicant avers that this application seeks for extension of time to file an appeal on the decision of the District Court of Kinondoni that was heard *Ex-parte* before Honourable Jacob, RM.

However, delay in filing the appeal in time was caused by sickness since the applicant states to be a cancer patient who had to undergo chemotherapy treatment which deteriorated her health and barred her to file her appeal on time. Further, it is the Applicant's concern that, there are overwhelming chances for her appeal to succeed.

It is trite law that an appeal ought to be filed within the statutory time and not later than that. Failure to do so one is required to for an extension of time with the Court which is backed up with sufficient reason to cause the Court to exercise its judicious power on extension of time.

Coming to the case at hand, the circumstances are that the Applicant failed to file her appeal on time because of being sick. The Applicant herein states to be suffering from throat cancer. Her assertion is evidenced by hospital documents that show the Applicant was sick, attached with a discharge summary report which shows that the Applicant was admitted on **28/11/2020** for palliative/radical radiotherapy where she received a total of 100 mls and was discharged on **31/12/2020**.

The record further shows that the Matrimonial matter before the Kinondoni District Court was disposed of on **15/04/2021** and an Application filed on the **14/06/2021**. **Section 80 (2) of the Law of Marriage Act, Cap. 29 [R. E. 2019]** provides that:

**"An appeal to the High Court shall be filed in the Magistrate's Court within forty-five days of the decision or order against which the appeal is brought".**

From the above, the Applicant had delayed **45 days** to appeal to the High Court of which, the **45 days** lapsed on **30/05/2021**. It is from the records that this Court observes that the Applicant until when filing this Application had lapsed for **17 days** only.

It is the Court's calling that when one applies for extension of time has to fall within the principles that were established in the famous case of ***LYAMUYA ON COMPANY LIMITED vs BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN ASSOCIATION OF TANZANIA, Civil Application No. 2 of 2010 (Unreported)*** of which guidelines were formulated to set what amounts to good cause. In this case it was held that **first**, the Applicant must account for all days of delay. **Second** the delay should be reasonable. **Third** the Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and **Fourth**, if the Court feels that there are other reasons, such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenged.

Having taken the circumstances of the nature of this Application in accordance to the reasons stated by the Applicant for the delay and the nature of the treatment of chemotherapy and its effects to cancer patients, I find that the delay of **17 days** to be reasonable.

In the event therefore, in consideration of the Application and submission of the Applicant, **this Application is hereby granted and the Applicant is to file her appeal within 21 days from the date of obtaining the copy of this ruling.**

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**22/10/2021**

**Court:** Ruling delivered in my chambers in presence of the Applicant in person and in absence of the Respondent.



**L. E. MGONYA**

**JUDGE**

**22/10/2021**