

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TEMEKE SUB-REGISTRY  
(ONE STOP JUDICIAL CENTRE)  
AT TEMEKE**

**MISC. CIVIL APPLICATION NO. 12 OF 2022**

*(Arising from the decision of District Court of Kinondoni at Kinondoni in Matrimonial  
Cause No. 87 of 2020)*

**LIKIDARO SAIDI SUMAIL..... APPLICANT**

**VERSUS**


**ASIA SWAI.....RESPONDENT**

**RULING**

Date of last order: - 12/09/2022  
Date of judgment: - 13/12/2022

This is a ruling on an application for an extension of time within which the applicant may file an appeal out of time against the the decision of District Court of Kinondoni in Matrimonial Cause No. 87 of 2020 delivered on 15<sup>th</sup> December, 2021.

This application is made under section 14(1) of the Law of Limitation Act, Cap 89, R.E 2019 Order XLIII Rule 2 and section 95 of the Civil Procedure Code, Cap 33, R.E 2019 and is being supported by the affidavit of Likidaro Saidi Sumaili, the applicant herein.



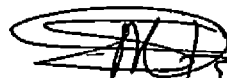
In this appeal both parties were represented. The applicant was represented by Geoffrey F. Alfred and respondent by Frank Ntuta. On 28<sup>th</sup> July 2022, this court ordered for the application to be disposed of by the way of written submission of which both parties complied timely. Arguing for the application the applicant stated that, the power on whether to extend time or not is discretionary and what is required is for the applicant to state sufficient reasons for delay. He submitted that, the term good cause is a relative one and dependent upon circumstances of each individual case. He cited the case of **Jehangir Aziz Abdulrasul v Balozi Ibrahim Abubakar and Bibi Sophia Ibrahim, Civil Application No 79 of 2016** to fortify his argument. He further stated that, the application has overwhelming chances of success as it intends to challenge irregularities which merit the intentions of lodging an appeal so that the court can intervene to rectify those irregularities by way of appeal.

His further submission, on the reasons for his delay, is that the decision of District Court of Kinondoni vide Matrimonial Cause No. 87 of 2020 was delivered on 15<sup>th</sup> December, 2021. The applicant spent two month to get the copy of the judgment. According to Order XXXIX Rule (1) of the Civil Procedure Code Cap 33, R.E 2019, the memorandum of appeal shall be accompanied by a copy of the decree appealed from. Thus, the applicant failed to lodge his appeal timely due to failure to get the relevant copies. He submitted that the delay was not cause by negligence of the applicant, but rather of the trial court by failure to supply him with the copy of the judgment and decree. He therefore, prayed for the application to be granted.

In brief reply Mr. Frank Ntuta prayed to adopt the contents of respondents counter affidavit first. He then stated that, the judgment was read to both parties on 15<sup>th</sup> December 2021 as indicated in the copy of the judgment annexed to this application. The applicant wrote a letter written on 3<sup>rd</sup> January, 2022 annexure L1 for the copies. In essence he is the one who delayed in applying for the copies, so his claimed failure to get copies in is not a sufficient reason for delay in filing an appeal to this court. After all, there is no evidence adduced by the applicant of his efforts in frequent visits to court for such copies to justify grant to him. He cited the case of **Airtel Tanzania Limited v Misterlight Electrical Installation Co. Limited & Another, Civil Appl. No. 37/01 of 2021, CAT** for substantiation of her argument.

Furthermore, the respondent stated that, the appellant received the copy of the judgment on 2<sup>nd</sup> March 2022 and lodged this application on 24<sup>th</sup> March, 2020 which makes a total of more than twenty days of which the appellant has failed to account for after getting the copies. The respondent also disputed the efforts the applicant claimed to have made in visiting the court premises seeking for a copy of the judgment and decree. There is neither tangible proof. That, in all, it was not necessary to attach the copies in such appeal, thus, it was not worth waiting for those copies to file the appeal. She thus, prayed for this application to be dismissed.

In the rejoinder the appellant reiterated most of what have been adduce in submission in chief which I do not intend to reproduce here. Mostly



he emphasized that his letter for the copies was filed and received by the court on 3<sup>rd</sup> January, 2022 as per the court stamp, therefore, if the if at all the copies were ready it could have been availed to him then as he was still within time to appeal. That proves that they were not ready and they were availed to him late after the time to appeal elapsed.

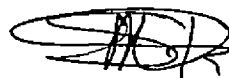
I made a thorough perusal of the parties' submission and the records. As a general principle, whether to grant or refuse an application for the extension of time is entirely in the discretion of the Court as correctly put by the appellant. However, such discretion is judicial and so it must be exercised according to the rules of reasons and justice. The court in extending time are govern by guidelines laid down in the land mark case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)** including accounting for all the period of delay, delay not being inordinate, applicant showing diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take. The court is also allowed discretion to consider other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged (see also **The Principal Secretary, Ministry of Defence and National Service v Valambhia (1992) TLR 185**).

Reading between the lines, the gist of the respondent's objection to this application is that the applicant provided no proof that he was supplied with the copies late and he has not accounted for the days of delay after procuring the copies that goes to 20 days to the date of filing this

application. In Mr. Ntuta's entire arguments, he did not deny the fact that the copies were procured late after the expiration of the time to appeal. He failed to bring contrary proof that the copies were procured earlier than what the applicant submits. The applicant's submission remains uncontradicted that he was availed with a copy after expiration of the period of appeal. We all understand the relevance of a copy of judgment and decree intended to be appealed against in facilitating filing of the intended appeal which cannot be undermined. It is not only for the purpose of attaching the same in the memorandum of appeal but also may be wide enough to cover other reasons like enabling scribbling the grounds of appeal themselves with accuracy and precision. In cases involving unrepresented lay persons, the parties may not be able to grasp the entire application of the judgment to proceed to the appeal directly without having the copy of the said decision. For that matter he needs a copy to take to the legal practitioner for drawing the accurate grounds of appeal. Therefore, delay in availing a party with a relevant copy becomes a sufficient reason for extension of time. That means the grounds for exercising such discretion is never closed as it depends on circumstances of each case.

In the case of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Limited, Civil Appl No. 96 of 2007, CAT** cited by the applicant's counsel it was clearly stated that

*"What constitutes a sufficient cause cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case..."*



Considering the circumstances of this case, the delay in getting copies in time constitutes a sufficient cause. This application is therefore granted. The applicant should file the intended appeal within 14 from the date of this ruling. No order as to costs.



A handwritten signature in blue ink, appearing to read "M. P. OPIYO", is written over a horizontal line.

**M. P. OPIYO,**  
**JUDGE**  
**13/12/2022**