

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. CIVIL APPLICATION NO. 20 OF 2022

*(Originating from the decision of Songea District Court in Civil Appeal No. 09/2012,
Original Civil Case No.04 of 2012)*

ROSE MAPUNDA APPLICANT

VERSUS

ALFONSI NTALA RESPONDENT

RULING

Date of last Order: 30/01/2023

Date of Ruling: 20/02/2023

U.E. Madeha, J.

To begin with, the Applicant has brought this application under section 20 (4) (a) and (b) of the *Magistrate Court's Act*, Cap. 11, R.E 2019 and any other enabling provisions of the law. In fact, she is praying for the extension of time in order to file an appeal in the decision made in Civil Appeal No. 09 of 2012 which was decided on 28th December, 2012 which was before Songea District Court.

As a matter of fact, both parties appeared in person and it was agreed by the parties that this application be argued through written

submissions. It is true that, they filed their submissions on time as it was ordered by the Court.

Basically, in her submission the Applicant prayed for the content of her affidavit to form part of her submission. She added further that failure to file an appeal within the prescribed time was caused by the reasons which were beyond her control. To add to it, she submitted that when the appeal was heard, she was pregnant and she was found to be HIV positive. On the other hand, the Respondent was found to be HIV negative. As a result of her health status, she was frustrated. Additionally, she averred that she was attending clinics for her pregnancy until the judgment was delivered.

Moreover, After the delivery of the judgment she was chased away from their matrimonial house and she remained helpless with her dear son. All those made her depressed and frustrated as a result she failed to file an appeal on time. On the same note, she argued that the first (1st) appellate Court failed to evaluate the evidence on the matrimonial house on where it is located and how it was built. Principally, she prayed that the prayers sought in the chamber summons must be granted for the sake and interest of justice.

On the contrary, the Respondent in his submission argued that for the Applicant to be granted an extension of time so as to file her appeal out of time she is required to show reasonable grounds which will enable this Court to exercise its discretionary power. In that regard, he further argued that what amount to reasonable ground was defined in the case of **Dar Es Salaam City Council v. Jayantilal P. Rajani**, Civil Appeal No. 27 of 1987 in which the Court of Appeal of Tanzania *inter alia* stated that:

"What amount to sufficient cause has not been defined. From the decided cases, a number of factors have been taken into account including whether or not the application has been brought promptly."

Furthermore, he averred that the records of the case shows that the judgment in Civil Appeal No. 09 of 2012 was delivered ten (10) years ago. Notably, he argued that on the issue of sickness the Applicant failed to prove as she never tendered any exhibit to prove that she was attending the hospital for the whole period of ten (10) years. Actually, he stated that the reasons given by the Applicant are pregnancy and her health status that she was found to be HIV positive whereby she became frustrated.

To crown it all, the Respondent emphasized that for the Applicant to be granted the extension of time the law requires that the Applicant must account for each day of delay. For more emphasis he made reference to the case of **Finca (T) Limited & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, in which the Court of Appeal of Tanzania emphasized the need to account for each day of delay.

As much as the appeal is concerned, the Respondent further submitted that the Applicant has stated that the judgment to be appealed has some illegality however, she failed to describe those illegalities. Lastly, he submitted that the application brought by the Applicant has no merit and it must be dismissed with costs.

It is worth considering that, in her rejoinder submission the Applicant has nothing to add than emphasizing that her application must be allowed due to the reasons she has submitted in her submission in chief.

As a matter of fact, having gone through the affidavit attached to the chamber summons and the arguments made by both parties, I find that there are two (02) main issues to be determined in this application namely:

Firstly, whether there is sufficient reason to grant the extension of time and *Secondly*, what are the available remedies.

To start with the first issue of whether there is sufficient reason adduced by the Applicant to grant the extension of time, I have gone through the attached judgment to be appealed it is undisputed that the judgment was delivered on 28th December, 2012 obviously that is more than ten (10) years ago. Apart from that, in her affidavit the Applicant stated that the reason for failure to file her appeal on time was due to the fact that she got her copy of judgment on 20th October, 2022. Although, the copy of the judgment was certified on 30th January, 2013. To put in a nutshell, there is no evidence which proves that the copy of judgment was among the reason for the late filing of her appeal for the whole period of ten (10) good years.

Also, the Applicant stated that she was frustrated with her health status after been found to be HIV positive whereby she was left to take care of her son alone as she was chased away by the Respondent who was her husband.

Besides, the Respondent argued that for the Applicant to be granted the extension of time she is required to show good and genuine cause and account for each day of delay as the law requires.

Principally, the Applicant in her application attached documentary exhibits which are the copies of the clinic attendance card. On the same note, the card shows that she was attending the hospital from the year 2011 on appointments. It seems to be true that, she was not attending on the daily basis. Similarly, the cards shows that she attended to the hospital up to 12th December, 2022 and she is still having another appointment to attend. As a matter of fact, the exhibits show that the Applicant has been attending the clinic since 2011, that is before the case which was instituted in the year 2012.

It is important to note the fact that, since the judgment was delivered the Applicant is late for almost ten (10) years and the main ground is her health status that she was found to be HIV positive and she became frustrated. As shown above the Applicant has been attending the HIV clinic even before the case was instituted.

Moreover, as argued by the Respondent that for the extension of time to be granted, the Applicant must account each day of delay and the reason for delay must be sufficient. Reference is made to the case of **Tanzania Coffee Board v. Rombo Millers Limited**, Civil Application No. 13 of 2015 (unreported), in which the Court of Appeal of Tanzania held that:

"Extension of time should be considered in two grounds; that every day of delay must be accounted, and the reason for the delay must be sufficient ..."

Basically, the issue of accounting for each day of delay has been discussed in a number of decisions of the Court of Appeal of Tanzania such as; **Kombe Charles Richard Kombe v. Kinondoni Municipal Council**, Civil Application No. 379 of 2018 (unreported), **Tanzania Fish Processors Limited v. Eusto K. Ntagalinda**, Civil Application No. 41 of 2018, **Crispian Juma Mkude v R**, Criminal Application No. 34 of 2012 (unreported) and **Lyamuya Construction Co. Limited v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010. In **Crispian Juma Mkude v**

R, (supra) while referring to the case of **Bariki Israel vs. R**, Criminal Application No. 4 of 2011 (unreported) the Court held that:

"... in an application for extension of time, the Applicant has to account for every day of the delay".

Notably, I am of the view that the Applicant failed to account for each day of delay. Therefore, I am of the opinion that the Applicant has no sufficient and genuine reasons to be granted extension of time file an appeal for the judgment which was delivered on 28th December, 2012.

To crown it all, as expounded above the Applicant has failed to account for each day of delay. Also, she has no sufficient and genuine reasons to convince this Court to exercise its powers to grant the extension of time in order to file an appeal which is out of time for a period of more than ten (10) years now.

Conclusively, from what has been discussed above, I find that the Applicant failed to adduce sufficient and genuine reasons to warrant the grant of the extension of time to file an appeal.

Additionally, on the second (2nd) issue of what are the available remedies in this application, since the first (1st) issue has been answered in

negative, I find that this application has no legs to stand and I proceed to dismiss it. I give no order as to the costs. It is so ordered.

DATED and **DELIVERED** at Songea this 20th day of February, 2023.



U.E MADEHA

JUDGE

20/02/2023

COURT: Ruling delivered on this 20th day of February, 2023 in the presence of the Appellant and the Respondent. Right of appeal is fully explained.



U. E. MADEHA

JUDGE

20/02/2023