

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

AT TEMEKE

MISC. CIVIL APPLICATION NO. 3157 OF 2024

REGNOLD GEORGE MALYI.....APPLICANT

VERSUS

JAZIRA ATHUMAN NGULUKO.....RESPONDENT

RULING

Last Order date: .02.04.2024

Ruling Date: 24.04.2024

M. MNYUKWA, J

This application is preferred under section 11(1) of the Appellate Jurisdiction Act, **Cap 141 R.E 2019** and section 95 of the Civil Procedure Code, **Cap 33 R.E 2019**. As usual, a chamber summons supported by an affidavit sworn in by the applicant was filed in this court, seeking for orders that:

- a) This honourable court may be pleased to grant extension of time to the applicant to file Notice of Appeal.*
- b) Costs of this application be provided for*
- c) Any other orders as the court deem just and equitable to grant*

In his affidavit applicant stated a series of cases which he litigated seeking for remedies against his grievances on a petition for divorce which was ruled in favour of the respondent. However, at paragraph 10 he



averred that this application is necessary since there is an issue of law which needs to be addressed by the Court of Appeal.

At the hearing parties were represented. For the applicant was learned counsel Elinas Kitua, who was assisted by Ms. Batilda Maly learned counsels, while Mr. Stanslaus Ishengoma learned counsel entered appearance for the respondent. The application was heard orally.

Supporting the application Mr Kitua adopted the applicant's affidavit and argued that in the course of seeking remedy against the impugned decision in Matrimonial Appeal No. 35 of 2019, he filed in this court a Misc. Civil Application No.658 of 2019 seeking leave to appeal to the Court of Appeal which was not specifically refused. He then filed in the Court of Appeal a Misc. Civil Application No. 441/2020 in which the Court directed the parties to challenge the decision in Misc. Civil Application No. 658/2019. Consequently, he filed a Misc. Civil Application No. 641/01 of 2022 of which the Court of Appeal granted 60 days to file Revision of a decision which was delivered on 23/11/2023.

He argued further that, when he was preparing to file the said revision it came to his knowledge that there was an amendment of the law, whereby, leave was no longer a requirement for a party wishing to appeal to the Court of Appeal. Therefore, it was his submission that, he was doing research on that issue before he jumped to do anything. Then, he filed



the present application seeking for extension of time to file notice of appeal.

Additionally, he argued that there is illegality on the decision of this court since the court invoked section 3(1) of the Law of Limitation Act, **Cap 89 R.E 2019** when dismissing the Matrimonial Appeal No. 35 of 2019 while the time limitation in matrimonial cases is not provided for by the Law of Limitation, **Cap 89 R.E 2019** as there is law governing matrimonial cases. He then prayed for this application to be granted so that the allegedly point of illegality be determined by the Court of Appeal.

Contesting the application it was Mr. Ishengoma who submitted that, since he did not file counter affidavit, he will argue on the point of law only. He then argued that for this application to be granted applicant has to subscribe to the laid down principles, thus, he had to account for each day of delay. Learned counsel argued further that, since applicant was given 60 days to file revision of which he ought to have filed it on 23/1/2024, but failed to do so until this application which was filed on 7/2/2024 after a lapse of another 14 days and the same was not accounted for, it is his opinion that this application should not be granted. He emphasized on accounting for each day of delay by citing the case which involved parties of this case, that is, **Reginald George Maly v**



Jazira Athumani Nguluko, Civil Application No. 641/01 of 2022 CAT
(Unreported)

Relatedly to the argument above, learned counsel submitted that, even if applicant wished to rely on the amendment which was made on 1/12/2023 still, according to Mr Ishengoma, applicant would have been out of time for 7 days which was also not accounted for. It was thus the learned counsel argument that, failure of the applicant to follow an order of the Court of Appeal amounted to abuse of court process.

Submitting on point of illegality, learned counsel argued that for matters which are filed out of time without leave of the court are governed by the Law of Limitation, Cap 89 R.E 2019. It was his argument that there was nothing illegal for dismissing a suit which was filed out of time by invoking the provision of the Law of Limitation. According to him, granting this application will be a wastage of time of the court and resources since every litigation must come to an end regardless of the result. He then prayed for this application to be dismissed.

In rejoinder, applicant's learned advocate reiterated what he submitted in chief and emphasized that his delay was caused by amendment of Law, and, he asserted further that matters which are not provided for by the Law of Limitation Act are not subject to dismissal rather they have to be struck out. He insisted that there was illegality on the impugned decision.



Having heard the submission of the parties and considered evidence in record, the only issue for determination is whether this application has merit.

The law is settled that granting of this application or not is subject to court's discretion, of which, courts are enjoined to exercise it judiciously depending on the sufficient cause being established. However, what amount to sufficient cause depends on prevailing circumstances of each case (see the case of **Hyasintha Malisa vs John Malisa**, Civil Application No. 167/01 of 2021 CAT). As a matter of law, it is not enough for applicant to just establish a sufficient cause, but is also bound to account for each day of delay to justify that his delay was not caused by negligence or sloppiness in his intention to litigate his case. (See the cases of **Lyamuya Construction Company Limited vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 CAT, **Karibu Textile Mills Limited vs Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 CAT and **Meet Sigh Bhachu vs Gurmit Singh Bhachu**, Civil Application No. 463/02 of 2018 CAT).

Coming to this application at hand, it is undisputed that applicant was given 60 days by the Court of Appeal in Misc. Civil Application No. 641/01 of 2022 to file revision so that he can challenge the impugned decision of



this court which denied him leave to appeal. It has to be noted that 60 days were to be counted from 23/11/2023 which lapsed on 21/1/2024. Applicant argued that in the course of his preparation to file revision, it came to his knowledge the amendment of the law which amended section 5 of the Appellate Jurisdiction Act, **Cap 141 R.E 2019** by removing a requirement of leave, it follows therefore that he had to prepare so that he file this application. If I have to accept this argument, and considered the counting of 60 days from the date of the amendment which was 1/12/2023, applicant ought to have filed this application on 29/1/2024. But he filed the same on 7/2/2024 after expiry of 8 days which, as argued by Mr Ishengoma whom I agree with, applicant failed to account for each day out of those 8 days.

Since in the case of **Lyamuya Construction Company Limited (supra)** the Court of appeal laid down principles to be considered before an application for extension of time is granted, among the laid down principles, accounting for each day of delay is provided for. Therefore, failure to account renders an application devoid of merits.

Also, applicant contended that there is illegality on the impugned decision whereby, he argued that, this court dismissed the matrimonial appeal by invoking the provision of section 3(1) of the Law Limitation Act, **Cap 89 R.E 2019** which according to the learned advocate was an



irregularity. It was his submission further that the issue whether the court was correct to invoke the law of limitation to matrimonial matters of which time limit is provided under the law of Marriage Act, **Cap 29 R.E 2019** and not the Law of Limitation Act, has to be determined by the Court of Appeal.

To begin with, I must say that the law is settled that once there is a point of illegality which is apparent on the face of the record, the same is a sufficient ground for extension of time. Having in mind that the applicant is asserted that there is an issue of illegality in which it is not my task to determine since doing so will be like to confer the jurisdiction which I am not vested with.

It is a trite law that once there is illegality, the same cannot be left to stand so as to put the records straight In **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No 10 of 2015. The Court of Appeal observed that:

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record straight."



However, for the irregularity or illegality to stand as a ground for extension of time, the applicants must successfully demonstrate that the point of law which is said to be irregular, must be of sufficient importance and apparent on the face of the record such as a point of jurisdiction. In **Lyamuya Construction Company Limited v Board of Trustee of Young Womens Christian Association of Tanzania**, Civil Application No. 2 of 2010, it was held that:

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts it cannot in my view be said that in valambia's case, the Court meant to draw a general rule that every applicant who demonstrate that his intended appeal raises points of law should, as of right be granted extension of time he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and I would add that it must also be appearent on the face of the record, such as the question of jurisdiction; not one that will be discovered by a long drawn argument or process."

In this matter applicant is contesting the applicability of section 3(1) of **Cap 89 R.E 2019** to be used in matrimonial matters of which time limitation is prescribed by the Law of Marriage Act, **Cap 29 R.E 2019**. Henceforth learned advocate described the use of the said provision as illegality.




As I have said earlier on, I am refraining myself from going in details and determining this issue since by doing so will be determining a question which has to be determined by the Court of Appeal if this application is granted. Thus, as far as this application is concerned and a prayer by the learned advocate that, there is a matter of law which has to be determined by the Court of Appeal, I therefore, as a matter of law which demands justice to be seen to be done, I grant this application. Applicant is given 21 days from the date of this ruling to file a notice of appeal to the Court of Appeal.


I make no orders as to costs since the parties were couple.

It is so ordered.




M.MNYUKWA
JUDGE
24/04/2024

Court: Ruling delivered on 24th April 2024 in the presence of the applicant's counsel who hold brief for respondent's counsel.


M.MNYUKWA
JUDGE
24/04/2024