

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. CIVIL APPLICATION NO 101 OF 2021

*(Originating from Misc. Civil Application No. 1 of 2021, in the Juvenile Court of
Monduli at Monduli)*

YOHANA ZAKARIAAPPLICANT

VERSUS

JOSEPHINE OMARI RESPONDENT

RULING

06/09/2022 & 15/11/2022

KAMUZORA, J.

The Applicant preferred this application seeking for extension of time within which to file Memorandum of appeal out of time. The application was brought under the provision of section 14 of the Law of Limitation Act Cap 89 R.E 2019 and Section 95 of the Civil Procedure Code Cap 33 R.E 2019 and supported by an affidavit sworn by the Applicant himself. The application is contested by counter affidavit sworn by the Respondent herself.

When the application was called for hearing, the Applicant enjoyed the service of Ms. Veneranda Joseph, advocate from ABC Attorneys

while the Respondent was dully represented by Ms. Happiness Mfinanga an advocate from Tanzania Women Lawyers Association. Hearing of the Application was by way of written submissions and they filed their submissions as scheduled.

The brief background leading to this application is that, before the Juvenile Court of Monduli at Monduli (the trial court) the Respondent instituted an application for enforcement of maintenance order against the Applicant to the tune of Tshs. 60,000/= per month until the three children of the parties attain the age of majority whereas, the matter was determined in favour of the Respondent. Being aggrieved by the trial court's decision and as the statutory time to lodge his appeal before this court had lapsed the Applicant then preferred the current application.

Submitting in support of the application, the Applicants counsel adopted the contents of the affidavit filed in support of the application and submitted that, the reasons for the Applicant's failure to lodge his appeal on time before this court is due to the fact that the Applicant was late to be supplied with copies of the decision and orders. That, from the date the trial court's decision was delivered, the Applicant made follow up of getting copies up to 22/10/2021 when the same were supplied to

the Applicant. That, by that time, a total of 11 days had lapsed as required by the law under Rule 123(1) of the Law of the Child (Juvenile Procedure) GN. No. 82 of 2016 where an appeal ought to be made within 14 days. The Applicant added that after receiving the copies on 22/10/2021, he used three days from 23/10/2021 to 25/10/2021 to draft the current application which was filed before this court on 26/10/2021.

It was further submitted that the Applicant has to account for each day of the delay as required under the law. He urged this court to be guided by the decision in the following cases; **Bushiri Hassan Vs. Latifa Lukio Mshayo**, Civil Application No. 3 of 2007, **Mary Kimaro Vs. Khalifa Mohamed** [1995] TLR 202, **Mobrama Gold Corporation Vs. Minister of Energy & Minerals and 2 others** (1998) TLR 425, **Samson Kishosha Gabba Vs. Charles Kingongo Gabba** (1990) TLR 133. It was the Applicant's prayer that the application be granted.

Opposing the application Ms. Mfinanga argued that, the Applicant was unable to prove the date the copies of ruling were issued to him. The Respondent claimed that the copies were issued to the parties on 10/10/2021 and both parties were present before the court and signed to have received the said copies. That, the current application is an

afterthought raised after the Respondent's intention to execute the decree.

On the case of **Bushiri Hassan** (Supra) the Respondent argued that, the Applicant has failed to account for his lateness since he was served with the copies of the ruling on 18/10/2021 and not on 22/10/2021. The Respondent's counsel insisted that the law requires the Applicant to demonstrate sufficient cause for the grant of extension of time. It was the submission by the Respondent's counsel that the reasons by the Applicant do not constitute sufficient reasons as the Applicant did not show efforts to make sure that the appeal was filed on time. Reference was made to the case of **Finca (T) Limited and Kipondogoro Auction Mart Vs. Boniface Mwalukisa**, Civil Application No 589/12 of 2018. Basing on that submission the Respondent's counsel prays that the application be dismissed with costs.

In a brief rejoinder the Applicant's counsel submitted that the Respondent is not certain of the exact date that the Applicant was served with copies of ruling between 10/10/2021 and 18/10/2021. That, even if the Applicant was served with the said copies on 18/10/2021 he was still out of time to lodge his appeal which was required to be lodged within 14 days hence he ought to have applied for an extension of time.

Referring to the case of **Musa & another Vs. Wanjiru and another** (1970) EA 481 the Applicant insisted that, he could not appeal on time due to the delay to be supplied with copies of ruling.

Responding to the issue of degree of lateness, in referring the case of **Karibuel J. Mola Vs. Tanzania Zambia Railway Authority**, Labour Revision No 780/2019 it was the Applicant's counsel submission that the Respondent cannot expect the Applicant to account for each day of delay without considering the circumstance and nature of the delay. It is still the prayer of the Applicant that the application be granted.

I have considered the application, the parties' affidavits and the submission in support of application and that opposing the application. The main issue calling for determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay. It is trite law that grant of extension of time is a matter of discretion of the court, the discretion which however, must be exercised judiciously. The reasons for the delay have been stated by the Applicant under paragraphs 2 and 3 of the affidavit filed in support of the chamber application to be the delay in obtaining the certified copies of the ruling and decree.

Reading the records and the parties' pleadings pursuant to annexure EXB-A and J1 it is undisputed fact that the ruling of the trial court was pronounced on 28/09/2021. What is disputed between the parties herein is the date on which the parties were availed with certified copies of the same. It was submitted by the Applicant that the certified copies were supplied to him on 22/10/2021 while the Respondent contends that the same was supplied on 10/10/2021 in the presence of both parties but she later mentioned that the copies were supplied on 18/10/2021.

The Respondent further mentioned that both parties signed to have received the copies. It is unfortunate that neither of the parties brought to this court any document evidencing the parties' signature in receiving the copies of the ruling. However, the copies of the court ruling show that it was certified by court on 18/10/2022. Thus, logically an assumption will be either the same were supplied on that date if both parties were aware that it was ready for collection or it was real supplied to the Applicant on the later date which he mentioned to be 22/10/2021. But all in all, by 18/10/2021 when the copies were certified, the Applicant was already out of time to file the appeal. The law under Rule 123(1) of the Law of the Child (Juvenile Court Procedure) GN No 182 of

2016 provides time limit for aggrieved parties to institute an appeal before this court and the law states that:

*" The court shall, when a finding, sentence or order is made or passed, inform the parties that they have **fourteen days** in which to enter an appeal."*(Emphasis provided).

Since the Appeal was to be made to this court within 14 days, from the date the order or decision of the trial court was pronounced that is on 28/09/2021, the appeal to this court ought to have been made on or before 12/10/2021. Thus, by 18/10/2022 when the copies were certified and ready for collection, the Applicant was already out of time. Pursuant to section 19(3) of the law of limitation Act Cap 89 R.E 2019 and the holding in the case of **Alex Senkoro and 3 others Vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT (unreported), the time requisite to obtain the certified copies of judgment and decree are to be excluded in computation of time.

While the Applicant claimed that he filed this application on 26/10/2021, the records show that the Applicant applied for legal aid on 12/11/2021 which was issued on 16/11/2021. He presented the application in court and the same was received and endorsed with the court seal on 22/11/2021. The signature by the Deputy Registrar seems

to be inserted under the column dated 26th October 2021 which however cannot be considered as the date to which it was filed. I say so because, it could not be signed by the registrar before the same was received and endorsed at the registry office.

If I assume that the copies were supplied on the same date on 18/10/2021, then the time limit of 14 days to lodge appeal to this court ended on 01/11/2021. The Applicant was therefore responsible to account for the delay of 20 days counted from 02/11/2021 to 22/11/2021 when this application was filed in court. But if I agree that the copies were supplied on 22/10/2021 as alleged by the Applicant then the 14 days are counted to 04/11/2021. Thus, the Applicant was to account for delay of delay of 12 days counted from 05/11/2021 to 22/11/2021.

From the above analysis, it is clear that the Applicant was unable to justify the above delay. It is a settled principle in numerous decisions that, a delay of even a single day, has to be accounted for, otherwise, there would be no need of having rules prescribing periods within which certain steps have to be taken. For this, see the case of **Bushiri Hassan Vs. Latifa Mashayo**, Civil Application No. 3 of 2007 (Unreported). The applicant only pointed that he was preparing this


application for filing from 23/10/2021 to 25/10/2021 meaning that the documents were well prepared on time but delayed to be filed in court. There is nothing proving that although prepared on 26th October, 2021, those documents were real filed in court on that date.

Considering the circumstance of the current application, it is my firm stand that, the present application was filed on 22/11/2021 and the Applicant was unable to account for each day of the delay or even provide a critical explanation of the delay in the days that followed after obtaining the copies of the decision. In other words, the Applicant has failed to demonstrate existence of valid reasons to warrant the grant of an extension time.

In the upshot the application is devoid of merits and the same stands dismissed. Considering the parental relationship that exists between parties no order for costs is made.

DATED at ARUSHA this 15th day of November, 2022.




D.C. KAMUZORA
JUDGE