

TANZANIA / JUDGMENT

Ruling FREEMAN MASAMO v NEEMA JUMA HUSSEIN

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISC. APPLICATION NO. 8218 OF 2024 (Arising Matrimonial Appeal No.
17/2023 in Nyamagana District Court Originating from Matrimonial Cause No. 64/2023 of Mwanza
Urban Primary Court) FREEMAN FANUEL
MASAMO.....APPLICANT VERSUS NEEMA JUMA
HUSSEIN.....RESPONDENT

RULING

15th August & 13th September, 2024. ITEMBA, J. By way of chamber summons, the applicant, applied to this court for an order of extension of time to file an appeal against the decision of Nyamagana District Court in matrimonial Appeal No. 17 of 2023 which was delivered on 11/1/2024. The application is supported by an affidavit of Angelo James Nyaoro and it is contested by the counter affidavit of the respondent herein. From the affidavit supporting this application, the ground advanced is a technical delay. That, the applicant's advocate could not file the appeal on time because following delivery of the said impugned decision, he was availed with necessary documents and case reference number. However, he could not access the records of matrimonial appeal 1 no. 17/2023 which will enable him to file the intended appeal. The said records of the District Court were in the Judiciary e-filing System. It was until 5/4/2024 when they were informed that the technical error has been resolved. Hence this application. On the date when the matter was scheduled for hearing, the applicant was represented by Angelo James Nyaoro while the respondent was represented by Beatus Linda, both learned advocates. In support of the application, it was the submission of Mr. Nyaoro that, when the decision was issued it was not uploaded in the case management system. That, on 9/2/24 their effort to file an appeal failed because the case in the system was reading 'pending for judgment'. That, they wrote a letter to the court but since the relevant Magistrate was transferred to Arusha they were told that her account was closed and no one could access it. That, it took longer time up to 5/4/2024 when they were informed that the matter is settled but by then, they were already out of time. We with this submission, he prayed for the application to be allowed. In reply, it was submitted that, the issue of defect in the case management system is not a valid ground for extension of time. That, the respondent is expected to have an affidavit of any of the court's officers 2 dealing with case

management system to back up the applicant's submission. That, the fact that the court's officer was transferred to Arusha is not in the affidavit. The learned counsel prayed for the application to be dismissed with costs. In rejoinder Mr. Nyaoro submitted that, in the chamber summons they stated that they will rely on the affidavit and other grounds. And that, they have attached letters dated 12/2/24 and 1/3/24 to prove that they made follow-up to the court. I have considered the submissions of both parties. I will now determine whether this application has merit. It is settled law that, for the court to grant application for extension of time, the applicant is required to advance good cause for the delay in filing the intended appeal on time. By doing so, the applicant is also required to account on how each day has passed without negligence on his part. There are numerous authorities to this position including the cases of Kalunga & Company Advocates Ltd v. National Bank of Commerce Ltd (2006) TLR 235 and Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 02 of 2010. 3 In this matter at hand, the judgement of the District Court was delivered on 11/1/2024. Appeals from the judgement of the District Court on Matrimonial proceeding are governed by the Law of Marriage Act Cap 29 R.E 2022 (the Act) and the Law of Marriage (Matrimonial Proceedings) Rules, GN. No 139 of 1971 (the Rules). Section 80 as rectified by The Rectification of Printing Errors) (The Law of Marriage Act [Cap. 29 R.E 2019) Notice, GN No. 487 of 2022 provides the right and at time of appeal. It reads; "80 (1) Any person aggrieved by any decision or order of a primary court, or by any decision or order of a district court, may appeal from that court, respectively, to the district court or to the High Court.

- (2) (2) 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." (emphasis added) The manner on which the appeal need be filed is provided by Rule 37 of the rules which reads;

37. Memorandum of appeal

- (1) An appeal to the High Court under section 80 of the Act shall be commenced by a memorandum of appeal filed in the subordinate 4 court which made or passed the decision, order or decree appealed against.
- (2) n/a
- (3) Upon the receipt of the memorandum of appeal, the subordinate court shall transmit to the High Court, the memorandum of appeal together with the complete record of the matrimonial proceeding to which the appeal relates. (emphasis added) It was the argument of Mr. Nyaoro that they delayed on filling the appeal to the High Court due to technical problem on the e-filing system. In my view, this argument was misconceived. What the applicant was required by law is to present his petition of appeal before the District Court. It should be noted that, this process is done manually by the aggrieved party. Then, the District Court will stamp the petition of appeal and dispatch it with the records of proceedings of the District Court and Primary Court and forward them to this court through Judicial e-Filing System. Therefore, all the efforts made by the counsel to solve the technical error in the e-filing system as deposed in the affidavit and annexures, were futile and

constitutes unawareness on part of the advocate. Whether the 5 records in the e-system had errors or not could not have precluded the applicant to file his appeal on time. The law is settled that ignorance of law or negligence of an advocate is not good ground for extension of time. I make reference to the cases of Calico Textile Industries Ltd vs. Pyaraliesmail Premji [1983] TLR 28 and Umoja Garage v National Bank of Commerce [1997] TLR 109. The counsel for the appellant being learned is expected to have known the procedure and the law governing filing of matrimonial appeals before the High Court. Moreover, as I have stated herein above the applicant is supposed to account for each day of delay. According to the affidavit, the applicant was informed that the technical issue has been sorted on 5/4/2024. This application was filed on 16/4/2024 which is 11 days later. Neither the affidavit nor submissions of parties explained on how those 11 days were spent. That being said, the application is devoid of merit. No good cause was shown to have precluded the applicant from filing the intended appeal 6 within time. As this application emanates from matrimonial proceedings, I order no costs. It is so ordered. Right of appeal explained. L.K.J. ITEMBA JUDGE 13/9/2024 Ruling delivered this 13th day of September, 2024, in presence of Mr. Beatus Linda counsel for the applicant also holding brief for Mr. Angelo James counsel for the respondent and Ms. Ziada Mrutu, RMA. L.K.J. ITEMBA JUDGE 13/9/2024 7

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