

TANZANIA / JUDGMENT

sharifa maggid nassor vs dassu mohammed musa 2021 tzhc 2210 14 january 2021

COURT
TZHCDECIDED
14 January 2021

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 124 OF 2020 SHARIFA MAGGID NASSOR.....
APPLICANT VERSUS DASSU MOHAMMED MUSSA..... RESPONDENT (Arising
from the decision of the Juvenile Court of Dar-es Salaam at Kisutu) (Missana- Esq, RM.) Dated
27th August 2019 in Civil Application No. 245 of 2018

RULING

3rd December 2020 & 14th January 2021 AK. Rwizile, J This application is for extension of time within which to file an appeal out of time. It is filed under section 130 (1) (2) of Law of the Child Act, section 93 of the Civil Procedure Code and section 14(1) of the Law of Limitation Act. The application is supported by an affidavit sworn by the applicant stating reasons and grounds for delay. The respondent filed a counter affidavit opposing the application. Since both sides were represented, the 1 application was argued orally. Mr. Mkirya learned advocate appeared for the applicant and was of the argument, apart from adopting the applicant's affidavit that this application be granted because the applicant was attending her sick sister. It was submitted as per the applicant's affidavit; her sister Natasha was admitted at Aga Khan Hospital on the week ending 29th August 2019. Later the same patient was referred and escorted her to India as her assistant. Upon coming back from India, it was found that the decision to be impugned was made on 27th August 2019. This discovery was made in October same year. The learned advocate asked this court to grant this application on the strength of his submission and the case of Elibariki Nko vs Mushi and Another

[1998] TLR 81. On his part Mr. Jamal learned advocate who stood for the respondent opposed this application. He was vehement that the applicant did not show good cause for delay. He asked this court to take wisdom of the Court of Appeal, in the case of Interchick Company Limited vs Mwaitenda Ahobokile Michael, Civil Application No. 218 of 2016 (unreported). According to him, the applicant has to account for all days of delay, which she failed to do.

His argument was clear that the applicant failed to prove that she was indeed outside the country. No records showing so, which were presented before this court. As well, it was submitted that the evidence available shows, the patient was capable of travelling to India and Dubai. She could not do so, it was held, if she were seriously sick. It was submitted further that there was unexplained amount of delay, since the applicant averred that she came back in October, while this application was filed 2 five months later. That is on 10th March 2020. By this, I was asked to dismiss this application with costs. Given a chance to rejoin, Mr. Mkirya for the applicant was clear that the applicant was the only person attending her sick blood sister as averred. He therefore prayed; this application be granted. Having heard the submissions, I have to say that, in law granting or refusing an application for extension of time is an exclusive discretion of the court. But times without number, this court and the court Higher to it have consistently laid down principles to be followed. In *Bushiri Hassan vs Latifa Lukio Mashayo*, Civil Application No. 3 of 2007, as referred in the case of *Interchick Company Limited* (supra), for instance, it was stressed at page 13 that, accounting for each day of delay is so crucial, otherwise, there is no reason to have rules prescribing time for which certain steps have to be taken. Expounding it further, reasons for granting an extension of time, are not limited to accounting for days of delay. In other cases, as I have said before, courts have to look at other issues such as;

- i. the length of the delay; ii. the reason for the delay: was the delay caused or contributed by the dilatory conduct of the applicant?; iii. whether there is an arguable case, such as, whether there is a point of law or the illegality or otherwise of the decision sought to be challenged; and/or 3 iv. the degree of prejudice to the opposite party if the application is granted (see the case of *Joel Silomba vs R*, Criminal Application No.5 of 2012 In the matter at hand, the applicant is a mother, trying to challenge the decision of the Juvenile Court in an application for maintenance. In actual fact she is attempting to fight for the rights of her child Anais Safa. I take it that since the application itself is not a normal matter between the parties, but rather affecting the interest of the innocent third party, a person who cannot argue her case. It is therefore a special issue that needs court consideration for purposes of securing her interest. That being the case, I have no reason to dispute that the applicant was out of the country attending her sister. That in itself, among other factors stated above is enough to grant this application. The application is therefore granted with no order as to costs. The applicant is given 30 days to file her appeal. Time starts to run from the day of this ruling. ACK. Rwizile Judge 14.01.2021 Ruling is delivered in the presence of Mr. Missana for the applicant. The respondent and his advocate are absent. ACK. Rwizile Judge 14.01.2021 4 Recoverable Signature X Signed by: A.K.RWIZILE 5

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