

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 164 OF 2016

BADRU ISSA BADRU APPLICANT

VERSUS

OMARI KILENDU 1ST RESPONDENT

HASHIM RUNGWE t/a H. RUNGWE LTD 2ND RESPONDENT

**(Application from the Judgment and Decree in Appeal of the High Court of
Tanzania (Land Division) at Dar es Salaam)**

(De-Mello, J.)

Dated the 28th day of September, 2012

In

Land Appeal No. 93 of 2009

RULING

14th September & 2nd December, 2016

ORIYO, J.A.:

Apparently, in Land Appeal No. 93 of 2009, in the High Court of Tanzania at Dar es Salaam, the applicant, Badru Issa Badru was not satisfied with the judgment and decree of the High Court delivered on 28/9/2012. He decided to appeal against the decision to this Court.

However, ~~having~~ when he realized that the prescribed time to appeal to the Court had run out, he sought from the Court an extension of time within which to lodge a notice of appeal against the decision of the High Court, in terms of Rules 10 and 47 of the Court Rules, 2009. The application was supported by an affidavit sworn by Badru Issa Badru, the applicant.

The grounds forming the basis of the delay are stated in the Notice of Motion and in the 25 paragraphed affidavit supporting the application. For ease of reference, I hereunder reproduce paragraphs 20, 21, 22 and 23 of the affidavit, which state as follows:-

"20. That the delay in filing the requisite Notice of Appeal was not a result of my negligence but due to inadvertence of my former counsel Mr. Gabinus Galikano who prepared the application for leave to appeal and merely cited rule 47 of the Tanzania Court of Appeal Rules, 2009, without citing the substantive enabling provision under the Land Disputes Court Act, 2002.

21. *That I have always been pursuing the matter diligently and in good faith as my interests are at stake.*

22. *That the intended appeal raises serious issues of law for determination by the Court of Appeal which include:-*

(a) Whether there was in law any sale agreement between Omary Kilendu and Hashim Rungwe?

(b) Whether oral sale agreement is sufficient to pass on title to land.

(c) Whether the sale agreement between Omary Kilendu and Hashim Rungwe had been breached by any of the parties to it.

(d) Whether as a bona fide purchaser for value without notice I was bound by the sale agreement said to exist between Omary Kilendu and Hashim Rungwe.

23. *That the decision of the High Court on appeal contains illegalities for reason of leaving undetermined key points identified for*

determination and for not making consequential orders as regards my right to the sale transaction having noted that the property had also been sold to me and that I was already in possession thereof."

In response, the first respondent filed an affidavit in opposition, sworn by Omary Kilendu, in terms of Rule 56 (1) of the Court Rules.

At the hearing of the application, the applicant was represented by Mr. Denis Msafiri, learned counsel while Mr. Serapius Mdamu, learned advocate appeared for the first respondent. Mr. Hashim Rungwe, who was the second respondent was absent and had no legal representation in Court. However, the hearing of the application had to proceed as scheduled; in his absence. Counsel opted to adopt their arguments, in writing filed earlier on in support of their respective positions taken.

As already stated, the application for extension of time was lodged in Court under the provisions of Rules 10 and 47 of the Court Rules.

Rule 10 of the Court Rules provides as hereunder:-

*"10 The Court may, **upon good cause** shown, extend the time limited by these Rules or by any*

decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be constructed as a reference to that time as so extended.”[Emphasis provided]

As the law on the enlargement of time is now well settled in terms of Rule 10 of the Court Rules (supra), that the Court has discretionary powers to extend the time limited by the rules or by any decision of the High Court or tribunal, for doing any act authorized by the rules, **upon good cause shown**. The issue here is whether the applicant has shown good cause to warrant the Court to exercise its discretionary powers in the applicant's favour.

The matters which the Court ought to take into account on whether to grant or not to grant extension of time include the following:-

- The **length** of delay;
- The **reason** for the delay
- The **degree** of prejudice to the respondent;
- **Chances** of appeal succeeding.

This Court has, in a number of cases accepted certain reasons. But no particular reason(s) have been set out as standard, sufficient reasons. It all depends on the particular circumstances of the case; and sufficient reasons mean reasons which convincingly explain away the delay; see Court's decisions in The **Registered Trustees of the Glory of Christ Church and Josea Bais Balthazar**, Civil Application No. 185 of 2013; **National Microfinance Bank vs Augustino Wesaka Gidimara t/a Builders, Paints and General Supplies**; Civil Application No. 154 of 2015; **The Attorney General vs Twiga Paper Products Ltd**, Civil Application No. 108 of 2008; (all unreported).

In an application for extension of time under Rule 10 of the Court Rules, the applicant ought to demonstrate **good cause** why such time should be extended. As to what amounts to **good cause**, it all depends on the circumstances of each case; but to include:-

The **reasons** for the delay; and most importantly is the **length** of delay; and if there **is an arguable case**.

However, by paragraph 12, of the applicant's affidavit, he states as follows:-

"That when the appeal in the Court of Appeal was called on for hearing the respondent Omary Kilendu, raised several preliminary points of objection against the competence of the appeal amongst which was that the leave to appeal was invalid as the High Court was wrongly moved due to improper citation of enabling provision of law when the application for leave was made.

13. That on 15th April, 2015 the Court of Appeal delivered its decision whereby the appeal before it was struck out for incompetence due to invalidity of the proceedings in the application for leave to appeal and the resulting order thereof."

Further reasons for the delay included an incomplete record of appeal which lacked some essential documents including the proceedings in Land Appeal No. 93 of 2009; in the High Court, the genesis of the application. His first attempt to obtain an extension of time to lodge a notice of appeal was made in the High Court but was dismissed due to inaction and negligence on the part of the applicant. In addition, the

applicant stated what has been reproduced above under paragraphs 20 – 23, (supra).

When all the foregoing reasons are considered jointly and together, I find the reasons advanced for the delay, cumulatively to be meritorious. In the event I find the application for extension of time to file the notice of appeal to have merit. Costs to be in the cause.

DATED at **DAR ES SALAAM** this day 28th of November, 2016

K. K. ORIYO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


B. R. Nyaki
DEPUTY REGISTRAR
COURT OF APPEAL