

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

CIVIL APPLICATION NO. 192/03 OF 2020

ASHA JUMA MANSOOR1ST APPLICANT
SEBASTIANI OLOMY..... 2ND APPLICANT
ATHUMANI HOTTY3RD APPLICANT
JACKSON MAKUNDI 4TH APPLICANT
JULIUS KOMBE5TH APPLICANT
JUMA MAULID6TH APPLICANT
HARUNA JUMA7TH APPLICANT
LEONIA MTUI @ MAMA BABU8TH APPLICANT
GRISFARU MTENGA9TH APPLICANT
PHILIPO R. KIWELU10TH APPLICANT

VERSUS

JOHN ASHERY MBOGOMI RESPONDENT

**(Application for extension of time to lodge appeal out of time from the
decision of the High Court of Tanzania, at Dodoma)**

(Kalombola, J.)

Dated the 3rd day of May, 2018

in

Land Case No. 16 of 2015

.....

RULING

11th & 17th August, 2021

KOROSSO, J.A.:

The applicants have filed the instant application for extension of time within which to appeal to the Court pursuant to Rules 10 and 4(2)(b) of the Tanzania Court of Appeal Rules, 2019 (the Rules), by way of Notice of Motion supported by an affidavit sworn by Edward Peter

Chuwa, learned Advocate for the applicant predicated by the following grounds: -

"1. That the applicants lodged a Notice of Appeal within time but by the time the applicants were supplied with copies of the proceedings and exhibits, the time upon which to institute the appeal to the Court of Appeal had already expired.

2. That the applicants applied and qualified to be issued with the Certificate of Delay in accordance with Rule 90 of the Court Rules but the said Certificate of Delay has not been issued by the Deputy Registrar of the High Court and the days which the said certificate of delay would exclude in lodging the appeal have expired.

3. That the judgment and Decree of the High Court is tainted with illegalities in that the suit was time barred and thus the honorable trial Court had no jurisdiction to try it."

The respondent did not file the affidavit in reply in terms of Rule 56 (1) of the Rules, however, both parties lodged their written submission in compliance with Rule 106 of the Rules.

To contextualize the instant matter, we find it prudent to present albeit in brief, the factual setting. The applicants herein were the

defendants in Land Case No. 16 of 2015, High Court of Tanzania sitting at Dodoma and the respondent was the plaintiff. The suit claims were for the respondent to be declared the rightful owner of a piece of land, plot No. 41, Block 10 Mwangaza Avenue, Mji Mpya area in Dodoma Municipality (the suit premises). After a full trial, the trial court in its decision dated 3/5/2018 (Kalombola, J.) declared the respondent as the lawful owner of the suit premises. Aggrieved, a notice of appeal to the Court was lodged by the applicants on 30/05/2018 and on 11/12/2018 they applied and were granted leave to appeal in Misc. Land Application No. 100 of 2018.

On 27/11/2019, the application for leave to appeal was withdrawn following enactment and coming into operation of the Written Laws (Miscellaneous) Amendments Act (No.3) No. 8 of 2018 which did away with the requirement for leave to appeal for a land matter arising from the High Court in the exercise of its original jurisdiction. Regardless of this development, the reality was that by the time the said amendments to the law took effect, the time prescribed to appeal to the Court had already expired, hence the current application.

At the hearing of the application, the applicants were represented by Mr. Edward Chuwa, learned counsel and the respondent enjoyed the services of Mr. Nkumuke Simon Yongolo, learned counsel.

The learned counsel for the applicants adopted the Notice of Motion, the affidavit, and the written submission filed in support of the application. He argued that the fact that the respondent had not filed an affidavit in reply was a concession and support of the application. He contended further that the applicants have demonstrated good cause to warrant grant of extension of time to lodge an appeal as prayed.

In reply, the counsel for the respondent supported the application. Thereafter, in rejoinder, the counsel for the applicant had nothing to supplement his earlier submission.

Having heard and considered the arguments from both sides, it is undisputed that although the Court's powers to extend time under Rule 10 of the Rules are both broad and discretionary, such powers can only be exercised where good cause is shown. Thus, having considered what is before me, I am of the view that the crucial point for determination is whether there is a good cause for condonation of the delay to file the appeal within the prescribed time.

Certainly, there are no laid down variables or a clear definition of the phrase "good cause" when exercising the discretion under Rule 10 of the Rules, however, there are factors which the Court considers when determining this, as introduced by various decisions of this Court. These

factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See cases such as, **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 and **Eliya Anderson vs Republic**, Criminal Appeal No. 2 of 2013 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (All unreported).

In the instant matter, the supporting affidavit particularly paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 aver that the reasons for the delay in lodging the intended appeal in time included the fact that the Certificate of Delay was not issued on time because the relevant file to enable the District Registrar, High Court Dodoma to process it on time was unavailable having been transmitted to the Court of Appeal, Dar es Salaam. Similarly, according to the applicants' counsel, while he awaited the Certificate of Delay, he discovered that the time to file the appeal had already expired, having started to run from 12/3/2020 when the

applicants were supplied with certified copies of proceedings, impugned judgment and decree, which prompted them to file instant application.

In **Osward Masatu Mwizarubi vs Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court stated that:-

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

Applying the essence of above-mentioned cited decisions, in the instant matter the impugned judgment was delivered on 03/04/2018. The applicants applied for copy of judgment, decree, exhibits and proceedings in Land Case No. 16 of 2015 on 08/05/2018 and jointly lodged a notice of appeal on 30/05/2018. Subsequently, they were supplied with certified copies of the proceedings on 11/03/2020. However, they were never supplied with the certificate of delay despite having applied on 12/03/2020 for reasons beyond their control. I find that what transpired thereafter up to the time of filing the current application are duly explained in paragraphs 10, 11 and 12 of the relevant affidavit.

In the end, after considering all the factors before me, including the fact that the application was uncontested, and that the applicants have shown that they duly pursued the intended appeal, undoubtedly, good cause for the delay to file the appeal was established to enable me exercise my discretion to grant the prayers sought.

For the foregoing reasons, the application is hereby granted as prayed. The applicants are hereby granted sixty (60) days within which to file the appeal from the date of this Ruling. Costs shall abide by the outcome of intended appeal.

It is so ordered.

DATED at DODOMA this 14th day of August, 2021.

W. B. KOROSSO
JUSTICE OF APPEAL

The ruling delivered this 17th day of August, 2021 in the presence of Ms. Margreth Mbasha for the respondent and is also holding brief for Mr. Edward Chuwa, learned counsel for the applicants is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "S. J. Kainda".

S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL