

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 376/17 OF 2019**

**BENEDICT MHAGAMA ..... APPLICANT**

**VERSUS**

**KALAITA YOHANA** (The Administrator  
of the Estate of late **SOPHIA MOHAMED**) ..... **RESPONDENT**

**(Application for extension of time to lodge an appeal out of time against  
the judgement and decree of the High Court of Tanzania, Land Division  
at Dar es Salaam)**

**(Makuru, J.)**

**dated the 14<sup>th</sup> day of November, 2018**

**in**

**Land Appeal No. 231 of 2017**

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**RULING**

19<sup>th</sup> February & 1<sup>st</sup> March, 2021

**LEVIRA, J.A.:**

This is an application for extension of time within which to lodge an appeal out of time against the decision of the High Court of Tanzania, Land Division (Makuru, J.) dated 14<sup>th</sup> November, 2018 in Land Appeal No. 231 of 2017. The application is by way of a notice of motion made under the provisions of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The notice of motion is supported by

an affidavit duly sworn by the applicant. The application is not opposed by the respondent.

A brief background of this matter is to the effect that, the appellant had unsuccessfully sued the respondent in the District Land and Housing Tribunal for Morogoro (trial Tribunal) for trespass to a piece of land measuring 30 acres located at Mikese Area in Morogoro Municipality. The appellant was aggrieved by the decision of the trial Tribunal and thus he appealed to the High Court. However, his appeal was dismissed. The applicant remained aggrieved and wished to appeal against that decision of the High Court, but time was not in his favour and hence, the current application for extension of time.

At the hearing of this application the applicant was represented by Mr. Lutufyo Mvumbagu, learned advocate, whereas the respondent appeared in person, unrepresented.

Mr. Mvumbagu adopted the applicant's affidavit to form part of his submission and stated that the applicant was dissatisfied with the decision of the High Court and therefore on 19<sup>th</sup> November, 2018 he filed a notice of appeal and wrote a letter to the Registrar of the High

Court to be supplied with copies of the proceedings, judgment and decree. The said copies were supplied to him on 22<sup>nd</sup> December, 2018.

Having received those copies and without knowing that the law had changed he applied for leave to appeal before the High Court. During hearing of that application, he was informed by the presiding judge that the law had changed and leave was no longer a requirement for appeal to the Court. According to the learned counsel, in such circumstances, the applicant withdrew his application so as to be able to appeal to this Court. In addition, he said, the information about the change of law came into the knowledge of the applicant while time to appeal had already lapsed. Therefore, the applicant had to lodge the present application for extension of time.

Mr. Mvumbagu submitted further that Rule 10 of the Rules allows extension of time upon showing good cause. There is no specific definition of good cause. According to him, failure to receive a copy of judgment in time amounts to good cause. He added that, the applicant had already taken essential steps immediately after the

delivery of the impugned decision, but was blocked by the reasons beyond his control.

He urged the Court to find that the applicant has been able to show good cause in terms of Rule 10 of the Rules and grant this application.

In reply, Mr. Yohana stated that he does not object this application. In fact, he said, *'let the intended appeal be filed and heard so as to reduce time and costs of attending the Court'*.

Having heard the parties, the question that follows is whether the applicant has been able to show good cause for the Court to exercise its discretionary powers to extend time for him to lodge his intended appeal out of time. In **Benedict Mumello v. Bank of Tanzania** [2006] 1 EA 227, the Court subscribed to the decision of the single Justice of the Court in the case of **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwandwa**, Civil Application No. 6 of 2001 (unreported) where it was stated that what amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into

account, including whether or not the application has been brought promptly, the absence of any or valid explanation of delay, lack of diligence on part of the applicant.

In the current application, as intimated earlier on, the impugned decision was delivered on 14<sup>th</sup> November, 2018 and the applicant lodged the notice of appeal on 19<sup>th</sup> November, 2018 well within time. On the same date, he also applied to the Registrar of the High Court to be supplied with copies of proceedings, judgment and decree for appeal purposes. The said copies were supplied to him on 22<sup>nd</sup> December, 2018. Thereafter, as the law required before the amendment, the applicant applied for extension of time to apply for leave to appeal to the Court. However, as stated above, his application could not come to an end as he was advised to withdraw it following the change of law.

It is evident from the sequence of events that the applicant had been diligent all the time taking steps immediately after the delivery of the impugned decision to pursue his right. **In Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported), it was stated as follows:

*"It is settled that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur."*

In the light of the above settled position, it on the record of this application that the applicant applied to be supplied with necessary documents for appeal purposes on 19<sup>th</sup> November, 2018. He was supplied the same on 22<sup>nd</sup> December, 2019 as stated in paragraph 3 of the supporting affidavit. On 10<sup>th</sup> January, 2019 he filed Misc. Land Application No. 17 of 2021 applying for extension of time to file an application for leave to appeal to the Court. In the course of hearing of the said application it came into his knowledge that leave is no longer a requirement and immediately he lodged this application. From the sequence of events obtaining in this matter it is very clear that the applicant has been active trying to pursue his right of appeal.

I have carefully considered the reasons for delay advanced by the applicant, I am satisfied in terms of Rule 10 of the Rules that the reasons for the delay as shown above constitute good cause. I also consider the concern raised by the respondent regarding his quest to see this matter comes to an end. In fact, this is a spirit behind the overriding objective principle.

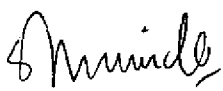
In the result, the application is granted. The applicant to lodge the intended appeal within 60 days from the date of delivery of this Ruling. Costs shall abide the outcome of the intended appeal.

**DATED** at **DAR ES SALAAM** this 25<sup>th</sup> day of February, 2021

M. C. LEVIRA  
**JUSTICE OF APPEAL**

The ruling delivered this 1<sup>st</sup> day of March, 2021 in the presence of Mr. Lutufyo Mvumbagu, learned Counsel for the Applicant and in the absence of the respondent Kalaita Yohana, is hereby certified as a true copy of the original.



  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**