

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

**CIVIL APPLICATION NO. 330/17 OF 2020**

**JUMA SHOMARI.....APPLICANT**

**VERSUS**

**KABWERE MAMBO .....RESPONDENT**

**[Application for extension of time to file an application for Revision  
against the decision of the High Court of Tanzania,  
Land Division at Dar es Salaam]**

**(Opiyo, J.)**

**dated the 29<sup>th</sup> day of April, 2020**

**in**

**Miscellaneous Land Appeal No. 41 of 2019**  
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**RULING**

24<sup>th</sup> February & 4<sup>th</sup> March, 2021

**KWARIKO, J.A.:**

The applicant, Juma Shomari was aggrieved by the decision of the High Court of Tanzania, Land Division at Dar es Salaam (Opiyo, J.) dated 29<sup>th</sup> April, 2020 in Misc. Land Appeal No. 41 of 2019 where the respondent won. The applicant had intended to challenge that decision by way of revision but was late to do so. He has now come before this Court with an application for extension of time to file revision against that decision.

This application is by way of a notice of motion taken under rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (henceforth the Rules). It is supported by the affidavit of the applicant. The applicant has deponed that the delivery of the impugned judgment was adjourned several times, that is on 13/3/2020, 23/3/2020 and 17/4/2020. It was not delivered on 17/4/2020 as ordered by the High Court and when his advocate inquired a week later, he was informed that it had already been delivered on 29<sup>th</sup> April, 2020 while himself was away in Kigoma.

The applicant averred further that, after his advocate collected the copy of the said judgment could not take any further step timely, because he (the applicant) was outside Dar es Salaam and was unable to decide on the way forward of the matter. He deponed further that, upon his return from Kigoma in the second week of July, 2020, that is when he decided to file this application on 12<sup>th</sup> August, 2020.

The respondent opposed this application through his affidavit in reply. He averred that the judgment was delivered on 29<sup>th</sup> April, 2020 in his presence and in the absence of the applicant or his advocate and he collected a copy of judgment one week later. He stated further that the

applicant did not exercise due diligence in following-up the matter through his advocate.

When the application was called on for hearing, Mr. Hashim Mtanga, learned advocate represented the applicant, whereas the respondent appeared in person, unrepresented.

In his argument in support of the application, Mr. Mtanga did not have much to say. He only adopted the affidavit of the applicant and prayed for grant of the application with costs.

On his part, the respondent equally adopted his affidavit in reply with no further explanation. He urged the Court to dismiss this application.

There was no rejoinder submission from Mr. Mtanga.

Having considered the parties' affidavits for and against the application, the Court is set to decide the crucial issue whether the applicant has shown good cause for the delay. Rule 10 of the Rules which is relevant here provides that in an application for extension of

time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.

Many times, in its pronouncements, this Court has had occasions to interpret this provision of the law and insisted that the applicant should show good cause before time can be extended for doing a certain act. Few of such decisions are; **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

However, what constitutes good cause has not been codified although this Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for instance the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001; **Tauka Theodory Ferdinand v. Eva Zakayo Mwita (As Administratrix of the Estate of the Late Albanus Mwita)**, Civil Application No. 300/17 of 2016; and **Wambura**

**N.J. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported).

The question to be asked now is, whether the applicant has shown good cause for this Court to exercise its discretion to grant extension of time to file revision. Firstly, the applicant has complained that the impugned judgment was delivered after being adjourned for several times. That, 17<sup>th</sup> April, 2020 was the last day ordered by the High Court for the delivery of the judgment but it was not the case. He accounted that, his advocate followed-up a week later and was informed that the judgment was delivered on 29<sup>th</sup> April, 2020.

I find this claim devoid of merit because if one week is counted from 17<sup>th</sup> April, 2020, it means the said advocate visited the court on 24<sup>th</sup> April, 2020 and it would not be possible to be informed that the judgment had already been delivered on 29<sup>th</sup> April, 2020 because it was a later date. However, the applicant's explanation remains to be hearsay because the said advocate did not file an affidavit to support that account. On this issue, I remain to believe the uncontroverted account of the respondent that both parties were aware that the judgment would be delivered on 29<sup>th</sup> April, 2020 that is why he attended

in court on that date. Secondly, the applicant has neither proved that he had travelled to Kigoma nor has he given the reasons for the travel.

Thirdly, the applicant claimed that he returned from Kigoma in the second week of July, 2020 which I take to be around 14<sup>th</sup> July, 2020, when he decided to take steps in respect of his case. However, this application was lodged on 12<sup>th</sup> August, 2020 which was almost four weeks later from his return from Kigoma. This period has not been accounted for.

It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application. This position has been pronounced in various decisions of this Court, few of which are in the cases of; **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Mpoki Lutengano Mwakabuta & Another v. Jane Jonathan (As Legal Representative of the late Simon Mperasoka, deceased)**, Civil Application No. 566/01 of 2018 and **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 (All unreported).

From the foregoing, it is glaringly clear that the applicant has not attempted to account for the delay of more than twenty days from the time he allegedly returned from Kigoma and the date of the lodgement of this application.

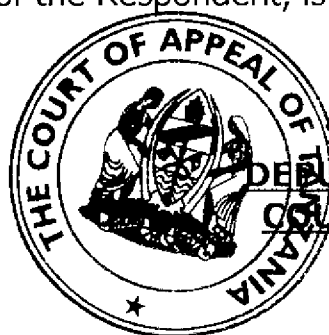
In the final analysis, I find that the applicant has failed to present good cause upon which this Court can exercise its discretion to grant extension of time to file revision. The application is thus devoid of merit and it is hereby dismissed with costs.

It is accordingly ordered.

**DATED at DAR ES SALAAM** this 2<sup>nd</sup> day of March, 2021.

M. A. KWARIKO  
**JUSTICE OF APPEAL**

This ruling delivered this 4<sup>th</sup> day of March, 2021 in the presence of Mr. Hashim Mtenga, learned counsel for the Applicant and in the absence of the Respondent, is hereby certified as a true copy of original.

The seal of the Court of Appeal of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE COURT OF APPEAL OF TANZANIA" and a star at the bottom.  
*S. J. Kainda*  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**