

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

**CIVIL APPLICATION NO. 420/17 OF 2019**

**M/S REGIMANUEL GRAY (T) LTD ..... APPLICANT**

**VERSUS**

**MRS MWAJABU MRISHO KITUNDU & 99 OTHERS ..... RESPONDENTS**

**[Application for Extension of Time to file an appeal from the Ruling of the  
High Court (Land Division) at Dar es Salaam]**

**(Mziray, J.)**

**Dated the 16<sup>th</sup> day of April, 2015**

**in**

**Land Case No. 76 of 2010**

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**RULING**

9<sup>th</sup> February & 12<sup>th</sup> March, 2021

**MWAMBEGELE, J.A.:**

The applicant herein moves the Court to extend time within which to lodge an appeal against the decision of the High Court (Mziray, J. - as he then was) rendered on 16.04.2015 in Land Case No. 76 of 2010. The application has been made under the provisions of rule 10 of the Tanzania Court of Appeal Rules, 2009 – GN No. 368 of 2009 (hereinafter referred to as the Rules). It is supported by an affidavit duly sworn by Deogratias J. Lyimo Kiritta; the applicant’s advocate. The same is opposed by affidavits

in reply deposed by Lilian Machagge, State Attorney for the 2<sup>nd</sup> – 4<sup>th</sup> respondents and Samwel Shadrack Ntabaliba, advocate for the 7<sup>th</sup> – 100<sup>th</sup> Respondents. No affidavit in reply has been deposed by or on behalf of the 5<sup>th</sup> and 6<sup>th</sup> Respondents.

To appreciate the matter before me, I find it appropriate to narrate the material background facts leading to this application, albeit briefly. The 1<sup>st</sup> Respondent; Mrs. Mwajabu Mrisho Kitundu, instituted a suit in the Land Division of the High Court against the applicant and the remaining 98 respondents herein claiming for ownership of a parcel of land situate within Mapinga Area in Bagamoyo District, Coast Region. That parcel of land, it was alleged, also contained two farms; one under CT No. 54495 granted to the applicant by the Commissioner for Lands and Human Settlement (the 3<sup>rd</sup> respondent) and another one under Letter of Offer No. 177890 in the name of Charles Gadi but the same had been allegedly sold to the applicant.

When the suit was fixed for hearing on 20.06.2014, neither the applicant's advocate nor her principal officer entered appearance. The High Court (Mwaimu, J.) dismissed the applicant's counter claim and ordered the suit to proceed *ex parte*. Dissatisfied by the two orders, the

applicant lodged an application to set them aside. That application was refused by Mziray, J. (as he then was) on 16.04.2015 and it is the subject of this application. The applicant's advocate timely filed a Notice of Appeal seeking to assail the refusal order by Mziray, J. He also timely filed an application for leave to appeal to the Court. He as well as timely applied for relevant documents for appeal purposes. The letter and Notice of Appeal were also timely served on the respondents.

The application for leave was dismissed on 28.04.2017 on the ground that there was no point of law worth consideration by the Court. Undaunted, the applicant lodged in the Court Civil Application No. 213/17 of 2019 still seeking leave to appeal against the decision of Mziray, J. refusing to set aside the two orders of Mwaimu, J. However, that application was withdrawn on 17.09.2019 it having been overtaken by events, for, in terms of the amendment effected to section 47 (1) of the Land Disputes Courts Act, Cap. 16 of the Revised Edition, 2002, leave to appeal to the Court was no longer a legal requirement.

The applicant then went back to the process of filing the appeal but then she was out of time. As the notice of appeal was in place, he filed this application on 27.09.2019 for extension of time within which to lodge

the appeal. The reasons advanced in the founding affidavit are as narrated above. In essence, the applicant is telling the Court that she was busy in the court corridors in the quest to find way to come to the Court. The applicant's advocate deposed that after the application was withdrawn on 17.09.2019 he filed this application on 27.09.2019 having been supplied with a copy of the withdrawal order on 23.09.2019. He added that he could not do that immediately after he got a copy on 23.09.2019 because he had to travel to Moshi on that day to attend a burial ceremony of his uncle, a certain Medard Joseph Lyimo. He returned on 25.09.2019 and filed the application on 27.09.2019, he deposed.

When the application was called on for hearing on 09.02.2021, both parties were represented. The applicant appeared through Mr. Deogratias J. Lyimo Kiritta, learned advocate. The first respondent was represented by Mr. Deogratias Mwarabu, learned advocate. Ms. Pauline Mdendemi and Ms. Lilian Machagge, learned State Attorneys, joined forces to represent the 2<sup>nd</sup> – 4<sup>th</sup> respondents. The 5<sup>th</sup> and 6<sup>th</sup> respondents had the services of Mr. Adam Mwambene, learned advocate and the 7<sup>th</sup> – 100<sup>th</sup> respondents had the services of Mr. Samwel Shadrack Ntabaliba, also learned advocate.

Submitting in support of the application, Mr. Kiritta first adopted the notice of motion, the founding affidavit and the written submissions earlier filed as part of his oral submissions and clarified on some points. Having narrated the background to the application as I have done above when setting the background to this application, he submitted that good cause has been shown to warrant the Court grant the order sought in terms of rule 10 of the Rules. He also relied on **Benedict Mumello v. Bank of Tanzania** [2006] 1 E.A. 227 to buttress the point that in applications of this nature, it is entirely in the discretion of the court to grant or refuse it and that an application will only be granted where it is sufficiently established that the delay was with sufficient cause. The learned counsel also relied on the decision of the Court in **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported) and **Tanzania Ports Authority and M/S Pembe Flour Mills Ltd**, Civil Application No. 49 of 2009 (also unreported) to underscore the point that what amounts to sufficient cause will depend upon a number of factors in a particular case including bringing the application promptly, valid explanation for the delay and diligence on the part of the applicant.

On the strength of the above, Mr. Kiritta implored the Court to exercise its unfettered discretion to grant the extension sought.

Mr. Mwarabu for the first respondent did not oppose the application. He thus had no qualms if the application would be granted as prayed.

The application faced a strong resistance from Ms. Mdendemi for the 2<sup>nd</sup> – 4<sup>th</sup> respondents. The learned State Attorney, having adopted the affidavit in reply lodged in the Court on 19.11.2019 as well as reply written submissions lodged on 17.01.2020, submitted that the application was wanting in merits and implored the Court to dismiss it. She attacked the contents of para 13 of the affidavit as being misconceived in that points of law to be considered by the Court of Appeal is not one of the elements to warrant extension of time. In the same token, she attacked the contents of para 14 of the founding affidavit to the effect that the Court cannot grant extension sought on the ground that the intended appeal has overwhelming chances of success. To reinforce the two arguments, the learned State Attorney referred me to the decision of the Court in **Lyamuya Construction Company Ltd v. Board of Trustees of Young Wome’s Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). She also cited **Wambebe Mtumwa Shahame v.**

**Mohamed Hamis**, Civil Reference No. 8 of 2016 to support the argument that the only determining factor in granting an application for extension of time is good cause.

Ms. Mdendemi did not stop there in her onslaught. She also directed her missiles to the depositions at para 10 of the founding affidavit arguing that the deponent has not substantiated the averments that he was bereaved of an uncle and that he travelled to Moshi on 23.09.2019 and returned two days later. Without the death certificate or any receipt used to buy fuel as he allegedly travelled by a private car, it becomes difficult to believe the deponent, she submitted. The learned State Attorney thus prayed for the Court to dismiss the application for want of good cause for the delay.

Mr. Mwambene for the 5<sup>th</sup> and 6<sup>th</sup> respondents did not oppose the application, except for any prayer as to costs to which he prayed that the 5<sup>th</sup> and 6<sup>th</sup> should be spared.

Mr. Ntabaliba for the 7<sup>th</sup> – 100<sup>th</sup> respondents resisted the application. He argued that the applicant has not demonstrated any good cause for the delay to warrant the Court exercise its discretion to grant the extension of time sought. He added that not every day of delay has been accounted

for. Clarifying, he submitted that the days from 17.09.2019 when the application for leave was marked withdrawn by the Court to 27.09.2019 when the present application was lodged in the Court have not been accounted for. Joining hands with Ms. Mdendemi, he contended that there was no proof whatsoever to substantiate that the applicant's counsel was bereaved and travelled to Moshi to attend a burial ceremony as alleged. He added that what has been enumerated at para 13 of the affidavit are not points of law but of facts which are not elements to grant an extension of time. The learned counsel branded the application as without merit and implored the court to dismiss it with costs.

In a short rejoinder, Mr. Kiritta conceded that, indeed, the depositions at paras 13 and 14 do not amount to good cause to move the Court to grant the extension sought. He also submitted that what is deposed at para 10 to the effect that he was bereaved of an uncle and travelled to Moshi on 23.09.2019 and returned after two days was but true. He could not lie under oath of the death of his uncle, he contended. As regards the contents of para 9, he submitted that a copy of the order of withdrawal was not supplied to the applicant immediately after it was delivered on 17.09.2019 until 23.09.2019 when a formal letter applying for



the same was written and lodged in the Court. He reiterated his prayer to have the application allowed with costs.

I have considered the notice of motion, supporting affidavit and affidavits in reply as well as written submissions by the parties in the light of the learned arguments at the oral hearing of the application. The law is settled that an application of this nature, in terms of rule 10 of the Rules and the learned counsel for both parties are at one on this, an applicant must show good cause for the delay. There is a long list of decisions of the court on the point – see: **Shanti v. Hindocha & Others** [1973] E.A. 207 and **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Yazid Kassim Mbakileki v. CRDB (1996) Ltd Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 and **Tanzania Bureau of Standards v. Anitha Kaveva Maro**, Civil Application No. 60/18 of 2017 (all unreported), to mention but a few. It is also settled that in applications of this nature, an applicant must account for each and every day of the delay – see: **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014 (both unreported).

In the case at hand, having gone through the record as alluded to above, I am of the considered view that the applicant has brought before me enough material to prove on a balance of probability that the delay was not without good cause. It has been deposed in the founding affidavit that the applicant has been busy all along in courts trying to find way to reach this Court by way of an appeal until 17.09.2019 when the application for leave to file an appeal in this Court was withdrawn. The present application was lodged some ten days later; on 27.09.2019. Accounting for the delay of ten days, it has been deposed that the copy of the withdrawal order was received on 23.09.2019 and the applicant's advocate travelled on the same day to Moshi to attend the burial ceremony of his uncle and returned on 25.09.2019. The applicant's advocate lodged the application some two days after he returned.

The applicant's advocate readily conceded that what has been deposed at para 13 of the affidavit does not fall under the category of good cause to move the Court to grant the extension sought. He is right. The fact that there are points of law to be considered by the Court does not, *ipso facto*, constitute good cause to grant extension of time. Neither does the fact that the appeal has overwhelming chances of success. However, despite this concession, as already said, the applicant has

succeeded to move the Court to grant her extension of time to lodge an appeal.

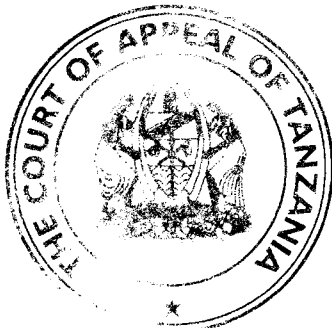
In the upshot, this application is allowed. The applicant is given sixty (60) days reckoned from the date of delivery of this ruling within which to lodge the appeal. The costs of and incidental to this application shall abide the outcome of the intended appeal.

Order accordingly.

**DATED at DAR ES SALAAM this 3<sup>rd</sup> day of March, 2021.**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

The ruling delivered this 12<sup>th</sup> day of March, 2021 in the presence of Mr. Deogratias Kiritta, learned counsel for the Applicant, Ms. Pauline Mdendeni, learned State Attorney for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, Mr. Adam Mwambene, learned Counsel for the 5<sup>th</sup> and 6<sup>th</sup> Respondents and Mr. Paul Mtui, learned counsel who held brief for Mr. Samwel Shadrack, for the 7<sup>th</sup> to 100<sup>th</sup> Respondents and in the absence of the 1<sup>st</sup> respondent is hereby certified as a true copy of the original.



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