

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CIVIL APPLICATION NO. 594/08 OF 2021**

**VEDASTUS RAPHAEL.....APPLICANT**

**VERSUS**

- 1. MWANZA CITY COUNCIL .....1<sup>ST</sup> RESPONDENT**  
**2. COMMISSIONER FOR LAND.....2<sup>ND</sup> RESPONDENT**  
**3. THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**(Application for extension of time to file appeal out of time against the  
decision of the High Court of Tanzania at Mwanza)**

**(Maige, J.)**

**dated the 20<sup>th</sup> day of November, 2017**

**Land Case No. 45 of 2014**

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**RULING**

22<sup>nd</sup> & 26<sup>th</sup> November, 2021

**MKUYE, J.A.:**

The background of this matter is that, the applicant had sued the respondents seeking to be declared a lawful owner of the surveyed land in Plot Nos. 101, 102 and 104 Block E within Mwanza municipality. He further sought to have the respondents compelled to issue him with certificates of title in respect of the plots and general damages. Upon hearing both parties, the High Court found that the applicant failed to prove title over the suit plots. It dismissed the suit.

Aggrieved, the applicant lodged a notice of appeal in time and made an application to be supplied with the necessary documents for purposes of the intended appeal. However, it appears that he failed to apply for leave to appeal to this Court within time as he was waiting to be supplied with the documents which were supplied to him on 10<sup>th</sup> January, 2018. Therefore, on 23<sup>rd</sup> March, 2018, he applied for an extension of time to file an application for leave (Misc. Land Application No. 69 of 2018) but the same was refused by Rumanyika, J. on account that the applicant failed to account for each day of the delay. Then, the applicant lodged a similar application (Civil Application No. 329/08 of 2019) to this Court in what can be termed as 'a second bite'. However, as leave was no longer a requirement in land matters originating from the High Court when exercising its original jurisdiction, on 2<sup>nd</sup> December, 2019 the applicant through his advocate prayed to withdraw it and the Court (Mwandambo, J.A) marked it withdrawn under Rule 58 (3) of the Tanzania Court of Appeal Rules 2009 as amended (the Rules).

Now, the applicant has filed an application for extension of time within which to lodge an appeal to this Court against the decision of the High Court of Tanzania at Mwanza in Land Case No. 45 of 2014 (Maige, J. as he then was) dated 20<sup>th</sup> November 2017. The application has been

predicated under Rules 10 and 90 (1) of the Rules and is supported by an affidavit of Vedastus Raphael, the applicant herein. He also filed written submissions in its support on 13<sup>th</sup> January, 2020.

On the other hand, the respondents filed two affidavits in reply sworn by Mr. Joseph Richard Vungwa and Lameck Merumba, learned State Attorneys, respectively. The 1<sup>st</sup> respondent also filed a written submission in reply on 6<sup>th</sup> July, 2020. Further to that, the respondents filed two lists of authorities one on 14<sup>th</sup> February 2020 and the other on 17<sup>th</sup> November, 2021 which they sought to adopt to form part of their submission.

When the application was called on for hearing, the applicant was represented by Mr. Mussa Mhingo, learned advocate; whereas the respondents had the services of Mr. David Kakwaya, learned Principal State Attorney assisted by Messrs Kitia Turoke and Joseph Vungwa together with Ms. Sabina Yongo, all learned State Attorneys.

In amplifying the application for extension of time, Mr. Mhingo in the first place sought to adopt the notice of motion, affidavit in support of the application sworn by Vedastus Raphael as well as the written submission filed on 13<sup>th</sup> January, 2020. After having done so, he

explained the reasons for lateness in filing the appeal that after Land Case No. 45 of 2014 was dismissed by Maige, J., the applicant filed a notice of appeal and lodged an application for leave to appeal to this Court but was dismissed by Rumanyika, J. on 20<sup>th</sup> June, 2019. He added that though the applicant also applied for copies of judgment and proceedings, they were not supplied to him in time. Apart from that, Mr. Mhingo argued that the applicant did not get a correct guidance as he was led to apply for leave to appeal which was no longer a requirement for a land matter originating from the High Court in its original jurisdiction and that a similar application on a 'second bite' was withdrawn and marked so by Mwandambo, J.A. In this regard, it was his argument that the applicant had spent a lot of time in court corridors pursuing his rights and not that he was idle. He, thus, urged the Court to find the application meritorious and grant it.

On the rival side, Mr. Kakwaya resisted the application. After having adopted the affidavits and written submission in reply, he sought to clarify some of the issues. He took off by citing the case of **Moses Muchunguzi v. Tanzania Cigarette Co. Ltd**, Civil Reference No. 3 of 2018 (unreported) where the Court gave guidance on factors to be

considered to constitute good cause in the applications of this nature as follows:

*"The Court has therefore developed some factors which can be considered to constitute good cause. Some of these include promptness of taking action, the length of the delay, **illegality and delay in being supplied with the necessary documents.** However, despite that fact, it cannot be taken as an indication that every application for extension of time under Rule 10 of the Rules will be approached by the Court in a way similar to another application..."*  
[Emphasis added].

Mr. Kakwaya argued that, although the applicant has stated that he was supplied with a copy of judgment on 10<sup>th</sup> January, 2018, he has failed to account for 73 days from that date to 23<sup>rd</sup> March, 2018 when he filed application No. 69 of 2018 which was a reason for the dismissal of that application on 20<sup>th</sup> June, 2019.

In addition, Mr. Kakwaya argued that though the applicant lodged a similar application to this Court on a 'second bite' vide Civil Application No. 329/08 of 2019 which was marked withdrawn by Mwandambo, JA. on 2<sup>nd</sup> December, 2019, he failed to account for 14 days from that date to when this application was lodged on 17<sup>th</sup> December, 2019. While

relying on the case of **Airtel Tanzania Limited v. Minister light Electrical Installation Co. Ltd and Another**, Civil Application No. 37/01 of 2020 (unreported), he stressed that the applicant ought to account for even a single day of delay for which he did not do.

The learned Principal State Attorney went on arguing that it was expected that the applicant could have shown in the affidavit that, perhaps, he was preparing for filing this application but that he did not do. To fortify his argument, he referred the Court to the case of **Farida F. Mbarak and Another v. Domina Kagaruki and 4 Others**, Civil Reference No. 14 of 2019 (unreported) where it was stated that:

*"Further we find that the explanations of the delay given by the applicants in their written submissions before the single Justice and also the explanations by Messrs. Mbwambo and Nyika in their respective submissions before us that the 5 days were spent in preparing and filing the application, to be statements from the bar which cannot be acted upon. As correctly held by the single Justice, the explanations needed to be given in the notice of motion or the supporting affidavit."*

On the issue that the applicant was not properly guided as shown in para 3 and 6 of the affidavit, it was Mr. Kakwaya's submission that ignorance of the law or that he did not know the time required to file the application does not constitute a good cause. To bolster his argument, he referred the Court to the cases of **Farida F. Mbarak** (supra) and **Omari R. Ibrahim v. Ndege Commercial Services**, Civil Application No. 83/01 of 2020 (unreported). He, also, while relying on the case of **Laureno Mseya v. Republic**, Criminal Application No. 4/06 of 2016 (unreported) contended that, it was not the duty of the Registrar to explain certain rights to the parties. In this regard, Mr. Kakwaya implored the Court to find that the application is devoid of merit and dismiss it with costs.

In rejoinder, Mr. Mhingo incidentally conceded that the applicant was late to file an appeal and that being ignorant of the law is not a sufficient cause to warrant extension of time. However, he urged the Court to consider the interest of justice though he did not come out clearly as to what was such an interest of justice. He stressed that the applicant was at all times in court corridors fighting for his rights.

He further tried to convince the Court that the application before Mwandambo, J.A seeking extension of time to file application for leave is

different from the one at hand seeking extension of time to file an appeal. He, then, reiterated his earlier prayer for the Court to consider the application and grant it.

The power of this Court to extend time for doing any act is provided for under Rule 10 of the Rules which states:

*"The Court may, upon good cause shown, extend the time limited by the 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 that act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."*

What amounts to "good cause" is not defined. It is based on the discretion of the Court which in most cases depends on the circumstances of the case which are to be determined judiciously. Thus, in the case of **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (unreported), the Court had this to say:

*"What amounts to sufficient cause has not been defined. From decided cases a number of factors have*



In the instant case, counsel for the applicant has given the history of the steps the applicant had taken after the decision in Land Case No. 45 of 2014 was handed down. That, after the said decision, the applicant among others lodged a notice of appeal, applied to be supplied with copies of documents necessary for appeal and applied for leave to appeal to this Court which application was dismissed by Rumanyika, J. on 20<sup>th</sup> June, 2019. The learned advocate contended further that the applicant was supplied with documents belatedly on 10<sup>th</sup> January, 2018 and he lodged Civil Application No. 69 of 2018 on 23<sup>rd</sup> March, 2018.

On the other hand, Mr. Kakwaya argued that the applicant has not accounted for 73 days from 10<sup>th</sup> January 2018 when he was supplied with documents to when Civil Application No. 69 of 2018 was filed.

Having considered Mr. Kakwaya's submission and the authorities in **Airtel Tanzania Limited** (supra) he had cited to the Court earlier on and **Bushiri Hassan** (supra), I am of the view that there was laxity on the part of the applicant. As was rightly submitted by Mr. Kakwaya the applicant has not been able to account for the 73 days from 10<sup>th</sup> January, 2018 when he was supplied with the documents necessary for lodging the application for leave to 23<sup>rd</sup> March, 2018 when the said

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

Yet, in the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), the Court expounded the following principles to be taken into consideration when considering extending time:

- "1. That, the applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence/and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- 4. If the Court feels that there are other reasons/such as the existence of a point of law of sufficient importance/such as illegality of the decision sought to be challenged."*

In the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) also, the requirement of accounting for even a single day was emphasised. (see also **Airtel Tanzania Limited's** case (supra)).

application for leave was lodged. The applicant did not offer any plausible explanation as to what he was doing in those days.

However, looking at the manner that application was handled, still there was lack of diligence and sloppiness. This is because, after the decision in Land Case No. 45 of 2014 was handed down, the applicant ought to have filed the appeal within 60 days after the notice of appeal was lodged. That is the period within which time to lodge appeal is reckoned regardless of other actions which were taken by the applicant including application for leave to appeal. Most importantly, even those other actions ought to be taken diligently without sloppiness. I thus, agree with Mr. Kakwaya's line of argument that the applicant failed to account for 73 days from 10<sup>th</sup> January, 2018 when he was supplied with documents to 23<sup>rd</sup> March, 2018 when he filed an application for leave to appeal to the Court which was the basis for the High Court's refusal to extend the time for filing an application for leave to appeal - see **Airtel Tanzania Limited** (supra) and **Moses Muchunguzi's** case (supra).

Besides that, it is without question that the applicant's application for leave on a 'second bite' was marked withdrawn at the instance of the applicant's advocate on 2<sup>nd</sup> December, 2019. However, the application at hand was instituted on 17<sup>th</sup> December, 2019. In between 15 days lapsed

and no account has been given by the applicant. In the case of **Farida F. Mbarak** (supra), the Court envisaged a certain number of days which might have been used for preparation and filing of the application provided that such fact is stated by the applicant in the notice of motion or the supporting affidavit. In this case, there was no explanation neither in the notice of motion nor affidavit in its support. On top of that, the applicant's advocate did not advance any argument along that line in his oral submission which, in any case, would not have sufficed - see **Farida F. Mbarak's** case (supra).

In the absence of such explanation, I agree, with Mr. Kakwaya's contention that the applicant has equally failed to account for the 14 days from when the application for leave on a 'second bite' was withdrawn on 2<sup>nd</sup> December, 2019 to 17<sup>th</sup> December, 2019 when the application at hand was filed.

Of course, I am alive that Mr. Mhingo attempted to convince the Court to find that the application for leave to appeal before Mwandambo, JA. is different from the application for extension of time to file the appeal at hand. However, in my view, much as the applications may appear to be different due to different prayers or reliefs sought, they are intertwined because in the later application the applicant has relied on

the former application to justify his lateness to file the appeal. He has taken the former application as among the reasons for the delay. In this regard, the learned counsel's contention is baseless.

As regards the issue that the applicant was not availed with proper guidance, I note that Mr. Mhingo in a way conceded that ignorance of the law does not amount to sufficient cause. However, he has urged the Court to consider the nature and circumstances of the case. In para 3 and 6 of the affidavit the applicant has averred that, he being a layman in law, he was not properly advised about the time limitation after being served with documents; and that he did not keep idle after being aggrieved with the High Court's decision. Mr. Kakwaya countered it contending that ignorance of the law does not amount to a good cause.

It is, however, a long-established principle in our Jurisdiction that, ignorance of the law or rather procedure involved in doing something does not constitute good cause to warrant extension of time. This position was emphasized in the case of **Farida F. Mbarak** (supra) where the Court discussed an akin issue and clearly stated that:

*"The law was therefore not new and the applicant's contention that the law was not accessible or that there was confusion in what the law, as rightly found*

*by the learned single Justice, was nothing but a **plea of ignorance of law which has never been accepted as a sufficient reason or good cause for extension of time.***" [Emphasis added]

On my part, I subscribe to the above authority. I agree with both parties that ignorance of the law does not constitute a good cause for extension of time. Therefore, based on the above cited authority, I find that the applicant's contention is baseless and cannot amount to sufficient cause for extension of time.

That aside, the contention that the applicant was not properly guided, in my view, is not tenable. In the case of **Laureno Mseya** (supra), the Court was confronted with a situation where the applicant had complained that after the refusal by single Justice to extend time, the Deputy Registrar did not inform him that if he was dissatisfied with the decision, he could apply informally for reference to the Justice at the time when the decision was handed down or by writing to the Registrar within a period of seven days of the decision. The Court discussed the issue and stated as follows:

*"I think there must be drawn a line between instances where the law casts a duty to the courts to explain certain rights of the parties / accused persons*

*such as explaining to them the right to appeal and the like. Unfortunately, matters of revision and review are not amongst them. Thus, I agree with Mr. Mtenga that this ground is not plausible because the Registrar had no legal duty to do so."*

In this regard, guided by the above cited authority, I agree with Mr. Kakwaya that the court had no duty to guide the applicant in relation to time limitation within which to act on the documents that were supplied to him as the applicant's counsel tried to suggest. It was upon the applicant to seek guidance from proper persons who could have advised him on the proper step and the proper time within which such steps were to be taken. Therefore, the applicant's contention about the improper guidance, as well lack merit.

Mr. Mhingo also submitted that the appellant had been languishing in court corridors fighting for his rights. However, it is my considered view that the applicant has failed to justify it as discussed herein above.

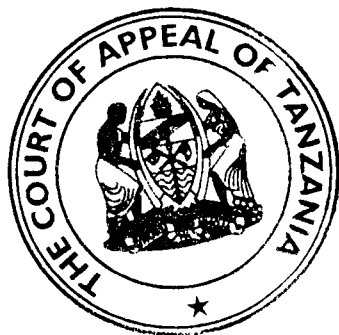
In the event, having considered the totality of the notice of motion and the affidavits; and the written submissions as well as oral submissions for and against the application, I am satisfied that the applicant has failed to advance good cause to warrant the Court to grant

extension of time within which to file the appeal. Consequently, the same is hereby dismissed with costs.

**DATED at MWANZA** this 26<sup>th</sup> day of November, 2021.

R. K. MKUYE  
**JUSTICE OF APPEAL**

This Ruling delivered this 26<sup>th</sup> day of November, 2021 in the presence of the Applicant in person unrepresented and Mr. Joseph Vungwa, learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.



*F. A. Mtaranja*  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**