

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 70/17 OF 2020

MARIANA MWAMAKULA APPLICANT

VERSUS

STEPHEN S. MLEO RESPONDENT

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

(Ndunguru, J.)

Dated the 26th day of June, 2019

in

Land Appeal No. 142 of 2018

RULING

22nd February & 12th 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 Land Division of the High Court (Ndunguru, J.) delivered on 26.06.2019 in Land Appeal No. 142 of 2018. The application is by a notice of motion taken under the provisions of rules 10 and 48 (1) of the Tanzania Court of Appeal Rules (the Rules). It is supported by an affidavit deposed by Mariana Mwamakula; the applicant.

When the matter was called on for hearing on 22.02.2021, the applicant appeared in person, unrepresented. The respondent appeared through Mr. Living Raphael, learned advocate.

When called upon to argue her application, the applicant simply adopted the notice of motion, the founding affidavit and the written submissions lodged on 20.04.2020 in support of the application, without more, as her oral argument.

For his part, Mr. Raphael did not have any objection to the application. The learned counsel, however, thought the applicant had a better option of seeking a certificate of delay from the High Court instead of seeking an extension of time in the Court as she did.

After the respondent's concession the applicant prayed that her application be allowed and prayers granted as prayed.

This application was not contested. However, I wish to put an anecdote here that in applications of this nature the Court will not grant an applicant the prayers sought as of right just by the mere fact that the application has not been contested by a respondent - see: **M.B. Business Limited v. Amos David Kasanda and Two Others**, Civil Application No.

66 of 2014 (unreported). That is to say; despite the concession, in order to grant the extension sought, the Court will still see to it that an applicant has shown good cause for the delay as required by rule 10 of the Rules – see: **Shanti v. Hindocha & Others** [1973] E.A. 207 and **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Sebastian Ndaula v. Grace Rwamafa (legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, **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.

I have read the notice of motion, the founding affidavit as well as the written submissions by the applicant. The reason why the applicant did not lodge the appeal timely is explained in the founding affidavit that she had to seek and obtain a certificate on point of law to come to the Court, the matter having originated from the Ward Tribunal. It is deposed that the certificate was obtained on 14.02.2020 but then sixty days within which an appeal could be lodged after filing the notice of appeal had already

elapsed; hence the present application. The present application was lodged on 05.02.2020.

I think the applicant has brought to the fore enough material on which to exercise my discretion to grant the extension sought. Filing a notice of appeal timely and applying for copies of proceedings timely coupled with seeking and obtaining leave to appeal to the Court as well as filing this application promptly is suggestive of the fact that the applicant acted diligently in his quest to challenge the decision of the High Court.

Mr. Raphael thought a resort could be made to seek and obtain a certificate of delay after the certificate on point of law was sought and obtained. With unfeigned respect to Mr. Raphael, I do not think the proposed option was a better course of action to be taken by the applicant. The letter dated 27.06.2019 by the applicant to the Registrar of the High Court was wrote timely but was not copied to the respondent. In the circumstances, in terms of rule 90 (3) of the Rules, the applicant could not be entitled to a certificate of delay. That subrule provides that an appellant shall not be entitled to rely on the exception to sub-rule (1) of that rule unless his application for the copies of proceedings was in writing

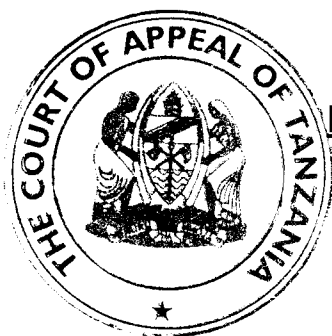
and a copy of it was served on the respondent. The appellant did not comply with the provisions of rule 90 (3) of the Rules to the letter, for she neither copied the letter to the respondent nor served on him. She could not therefore be entitled to a certificate of delay. The path taken by the applicant to lodge this application was thus apposite.


In the end, I find this uncontested application meritorious and allow it. The applicant is given sixty (60) days reckoned from the date of delivery of this ruling within which to lodge the appeal. Costs of and incidental to this application to abide the result of the intended appeal.

DATED at DAR ES SALAAM this 5th day of March, 2021.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

The ruling delivered this 12th day of March, 2021 in the presence of Mr. Tenzi Antoni, brother of the Applicant and Mr. Living Raphael, learned counsel for the Respondent is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL