

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

CIVIL APPLICATION NO. 502/06 OF 2021

WINFORD MLAGHAAPPLICANT

VERSUS

DINALES PAULO MWASILE

(The Administratrix of the Estate of the late

Paulo Mwasile 1ST RESPONDENT

RUTH MLAGHA..... 2ND RESPONDENT

MBEYA CITY COUNCIL..... 3RD RESPONDENT

**(Application for extension of time in which to lodge an application for leave
to appeal from the Ruling and Order of the High Court of Tanzania at Mbeya)**

(Utamwa, J.)

dated the 26th day of October, 2020

in

Miscellaneous Land Application No. 125 OF 2017

.....

RULING

10th & 16th February, 2022

KIHWILO, J.A.:

In this application the applicant, by way of notice of motion filed on 18th August, 2021 under Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) is seeking extension of time within which to lodge an application for leave to appeal by way of second bite to the Court against the Ruling of the High Court dated 26th October, 2020 in Miscellaneous Land Application No. 125 of 2017. This follows refusal of the initial application for leave sought before the High Court under section 47 (1) of the Land Disputes

Courts Act, Cap 216 R.E 2002 (now R.E 2019). The notice of motion has been supported by sworn affidavit of the applicant wherein, the reasons for his failure to lodge the application within the time prescribed by the law have been indicated. The application has been strenuously resisted by the first and second respondents whereas the third respondent has not opposed it.

At the hearing of the application before me, the applicant was represented by Simon Mwakolo, learned counsel whereas the first and second respondents were represented by Mr. Victor Mkumbe, learned counsel and the third respondent was represented by Mr. Hangi Chang'a, learned Principal State Attorney assisted by Mr. Mujahidi Kamugisha, Mr. Jibu Mbuu and Mr. Ladislaus Kisandu, both learned State Attorneys. Upon the applicant being asked to take the floor and expound his application, Mr. Mwakolo prayed to adopt the affidavit by the applicant along with the written submissions which were prior lodged in Court on 16th September, 2021 in support of the application. He very briefly and meticulously referred to paragraphs 8, 9 and 10 as well as paragraph 13 of the affidavit particularly sub-paragraphs (a), (b) and (c) which according to him clearly indicates illegalities which warrants this Court to grant the extension of time. He rounded up by praying that the Court should be pleased to grant the prayers sought.

When it was his turn, Mr. Mkumbe, learned counsel for the first and second respondents was fairly brief and prayed to adopt the written submissions which were prior lodged in Court on 24th September, 2021 without more.

On his part, Mr. Chang'a, learned Principal State Attorney, prefaced his submission by first praying to adopt the written submissions which were earlier on lodged in Court on 29th September, 2021 and eloquently submitted that, for the interest of justice they were not opposing the application owing to the illegalities stated at paragraph 13 of the affidavit in support of the application. He went on to state that, in view of the referred illegalities stated at paragraph 13 of the affidavit there is good cause for granting the extension of time sought. He illustrated that position by citing the decisions of this Court in **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 and **Edger Kahwili v. Amer Mbarak and Azania Bancorp Ltd**, Civil Application No. 21/13/2017 (all unreported). He urged the Court to grant the prayer for extension of time.

I have carefully examined the record and considered the arguments by both parties and in order to appreciate the essence of the application, I reproduce in extenso paragraphs 8, 9, 10, and 13 of the applicant's affidavit.

"8. That I failed to lodge an application for leave to this Honourable Court on account of having no ruling, proceedings and drawn order on Miscellaneous Land Application No. 125 of 2017.

9. That after going through the High Court Ruling dated 26/10/2020, I have discovered that the Honourable High Court Judge failed to construe the principle of double allocation of Plot No. 826 Block "R" Nzovwe Area and Plot No. 980 Block "R" Nzovwe Area in Mbeya City.

10. That the learned Judge did not deal with the issue of illegal sale of the disputed land by the 2nd respondent to the 1st respondent.

13. That on perusal of the proceedings and judgment of the District Land and Housing Tribunal, I discovered that, there were illegalities on the face of the record namely;

(a) Failure on the part of the trial tribunal to record the opinion of the assessors both in the proceedings and the judgment.

(b) Failure on the part of the High Court Judge both in Miscellaneous Land Application No. 125 of 2017, from Land Appeal No. 12 of 2013 to note that there were irregular changes of assessors before the trial tribunal.

(c) The issue of jurisdiction of the trial tribunal to sit by the Chairman only was not determined by both the trial tribunal and the High Court."

I have reproduced the above paragraphs deliberately in order to facilitate an easy determination on whether the application by the applicant is founded on sound basis.

The power of this Court to grant extension of time to an applicant is obtained in the provision of Rule 10 of the Rules which reads inter alia that:

"The Court may, upon good cause shown, extend the time limited by these 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 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."

At the outset, I wish to point out that, the law is very settled and clear in this jurisdiction that, in order for an applicant to succeed to prompt the court to exercise its discretion under rule 10 of the Rules to order an enlargement of time in applications of this nature, he must bring to the fore good cause for the delay. There is a plethora of authorities in this area but

to mention a few **Mumello v. Bank of Tanzania** [2006] 1 EA 227 and **Kalunga and Company Advocates v. National Bank of Commerce** [2006] TLR 235.

Although rule 10 does not go further to define as to what amounts to good cause. However, case law has it that extension of time being a matter within the Court's discretion, cannot be laid by any hard and fast rules but will be determined by reference to all the circumstances of each particular case. There is, in this regard a long line of authority to that effect, if I may just cite the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 in which this Court stated that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

In the instant application the circumstances leading to the delay are clearly stated in paragraphs 8 and 16 of the affidavit supporting the notice of motion. Essentially, the applicant is stating that he was unable to lodge the application for leave because he had no ruling, proceedings and drawn

order of the impugned decision and that the delay was occasioned by the High Court which delayed to furnish the applicant with the ruling, proceedings and drawn order. It is on record that the impugned decision was made on 26/10/2020 and on 02/11/2020 the applicant applied for certified copies of ruling, proceedings and drawn order to enable him lodge the application for leave within 14 days as prescribed by law. However, the applicant was notified on 21/06/2021 that the requested documents were ready for collection and on 18/08/2021 he lodged the instant application. Clearly, the applicant has been able to account for the delay which was occasioned by the court processes to prepare the requested documents.

It is a cherished principle of law that, in an application for extension of time, the applicant has to account for every day of the delay, see **Bariki Israel v. Republic**, Criminal Application No. 4 of 2011.

I find that the applicant acted with reasonable promptness. This Court has considered the issue of delay in lodging the application as one of the grounds for not granting the application for enlargement of time. In the case of **Attorney General v. Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016 the Court held that:

"What amounts to good cause includes whether the application has been brought promptly,

absence of any invalid explanation for the delay and negligence on the part of the applicant.”

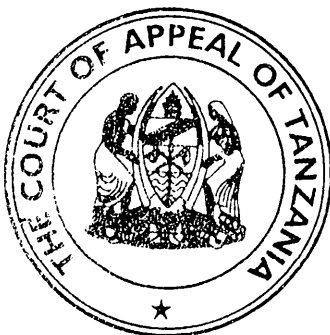
For those reasons, I find and hold that, the applicant has been able to explain every day of delay to warrant the Court exercise its discretion to grant the enlargement of time sought.

In the result, I grant the extension of time. The application should be lodged within fourteen days from the date of this ruling. Costs will be in the cause.

DATED at **MBEYA** this 15th day of February, 2022.

P. F. KIHWELO
JUSTICE OF APPEAL

Ruling delivered this 16th day of February, 2022 in the presence of Mr. Victor Mkumbe learned counsel for the 1st and 2nd respondents also holding brief for Mr. Hangi Chang’a learned Principal State Attorney for the 3rd respondent and Mr. Simon Mwakolo learned counsel for the applicant, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL