

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

CIVIL APPLICATION NO. 7/17 OF 2020

NASSORO MOHAMED PAZIAPPLICANT

VERSUS

MWAJUMA MSHINDO PAZI

(Administratrix of the estate late

MSHINDO MOHAMED PAZI)..... **RESPONDENT**

**(Application from the decision of the High Court of Tanzania,
Land Division at Dar es Salaam)**

(Kente, J.)

dated the 30th day of September, 2015

in

Land Case No. 66 of 2010

RULING

23rd March & 13th May, 2022

MAKUNGU, J.A.:

The application at hand has been preferred under the provisions of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules), whereby, applicant is moving the court to grant him extension of time within which to file an appeal out of time to this Court to challenge the decision of the High Court of Tanzania, Land Division in Land Case No. 66 of 2010 delivered on 30th September, 2015 (Kente, J as he then was).

The application is supported by an affidavit duly sworn by the applicant indicating the reasons as to why he failed to lodge the appeal within the time prescribed by law.

In addition, the applicant's affidavit highlighted a chronological account of events in relation to the application which is not contested by the respondent who did not file an affidavit in reply.

For a better appreciation of the issues raised herein, it is important to explore the background of the matter and the factual setting giving rise to this application. According to the affidavit in support of the application, the respondent filed a suit against the applicant for vacant possession of the house on Plot No. 408 Block 45C Kijitonyama, Dar es Salaam title No. 21508 registered in the name of Mshindo Mohamed Pazi, the respondent's father. The judgment was delivered *ex-parte* against the applicant.

Aggrieved by that decision, the applicant lodged Misc. Land Application No. 604 of 2015 to set aside the *ex-parte* judgment which was dismissed for lack of merit. Subsequently, on 13th December, 2017, the applicant lodged in the High Court, Land Division Misc. Application

No. 1028 of 2017 for leave to appeal to this Court but the said application was withdrawn by the applicant on 15th March, 2019 after realizing that it was preferred out of time. Thereafter, the applicant on 8th April, 2019 filed Misc. Land Application No. 194 of 2019 for extension of time to file leave to appeal out of time. However, the said application was withdrawn due to change of law making applying for the leave unnecessary.

Still being desirous to pursue the intended appeal, the applicant rebooted his quest by approaching advocate Godfrey Samwel who advised him to lodge an appeal against the said *ex-parte* judgment, however application for extension of time should be sought as time for filling appeal has elapsed, hence this current application which was lodged on 15th January, 2020. It is the applicant averment that all that time he was in courts corridors pursuing the matter diligently and in good faith.

The applicant also contended that the impugned decision is tainted with illegalities and irregularities as mentioned under paragraph 9 of the

affidavit which need to be addressed by this Court in the intended appeal.

As earlier pointed out the application was not contested by the respondent who did not file an affidavit in reply as required by the law.

At the hearing of the application, the applicant was represented by Mr. Amin Mohamed Mshana, learned counsel whereas the respondent appeared in person, unrepresented.

Submitting in support of the application, Mr. Mshana prayed to adopt the affidavit in support of the application and his written submission to form part of his oral submission. He then argued that, the applicant has taken various steps to challenge the impugned decision including application to set aside the *ex-parte* judgment, lodging the notice of appeal, application for leave to appeal and application for extension of time to file leave to appeal out of time. However, the said applications were withdrawn on various grounds, thus he decided to lodge this application.

As such, Mr. Mshana, urged me to find out that the delay was due to the time spent in pursuing different applications in the High Court and in this Court.

On the illegalities, Mr. Mshana argued that, the impugned decision is tainted with illegalities as the High Court Judge omitted to frame issues for the determination for the suit and also there was no Final Pre-trial Conference that was conducted. Furthermore, during the hearing of the suit there was a change of trial judge, from Kalombola, J to Kente, J and there was no reasons adduced whatsoever to justify such change. As such, Mr. Mshana urged the Court to grant the prayer sought in the notice of motion, to allow the pointed out irregularities to be addressed by this Court in the intended appeal. To bolster his proposition, he referred to the cases of the **Principal Secretary Ministry of Defence and National Service v. Devram P. Valambia** (1992) T.L.R. 385, **VIP Engineering and Marketing Limited v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6, 7 and 8 of 2006, **Celina Michael v. Mtanzania Newspaper and 6 others**, Civil Appeal No. 320 of 2017 and **Multichoice Tanzania Ltd v. Maxcom Africa PLC**, Misc. Commercial Application No. 4 of 2020 (all unreported).

In response, the respondent, opposed the application by arguing that the applicant has failed to show good cause for extension of time. She argued further that the applicant was required to file a notice of appeal before filling this application. On the alleged illegalities, the respondent who is a layperson she could not reply on the points of law raised by Mr. Mshana. However, she urged the Court to dismiss the application with costs.

In the light of the arguments raised by the parties, the thrust on the Court is to consider as whether or not the applicant has submitted good cause for the delay to warrant grant of this application. My starting point is the provisions of Rule 10 of the Rules under which the application has been preferred. In its own words, the provision stipulates thus:

*"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 the doing of the act; and any reference in*

*these Rules to any such time shall be construed
as a reference to that time as to extended”.*

[Emphasis supplied]

The bolded words in the quoted provision above, connotes the determinant factor in granting the application for extension of time. The issue therefore is to whether or not, the applicant has managed to demonstrate good cause as inferred in the quoted provision above. There is a plethora of authorities as to what meant by good cause. See: **Godwin Ndewesi and Karoli Ishengoma v. Tanzania Audit Corporation** [1995] T.L.R. 200, **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, **Joseph Paul Kyanka Njau and Another v. Emmanuel Paul Kyanka and Other**, Civil Application No. 7/5 of 2017 and **Lyamuya Construction Company Limited v. Board of Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010 (all unreported).

In **Lyamuya Construction Company Limited’s** Case (supra), the Court laid down some factors which can assist the court in assessing as to what amounts to good cause. It stated that:

- 1. 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 a party, negligence or sloppiness in the prosecution of the action 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.*

Basing on what has been highlighted above, the Court is enjoined in this application, to consider as to whether it qualifies in terms of the factors enumerated above. It is common knowledge that in the instant application, there was inordinate delay by the applicant to lodge his application because the dismissal of the application by the High Court was made on 21st September, 2017 and this application was lodged on 15th January, 2020. The account which has been given by the applicant for the delay was to the effect that the applicant has spent a lot of time in pursuing different applications in the High Court and in this Court.

Upon dispassionately giving a deep thought to the sequence of events in the scenario explained by the applicant in his affidavit, and regard being to the fact that, it has also been complained by the applicant that, there were some illegalities in the judgment complained of, I am convinced to give way for the alleged irregularities and legal issues, to be addressed on appeal. In so holding, I am fortified by the decisions in **Principal Secretary Ministry of Defence and National Service (supra)**, **Tropical Air (Tanzania) Limited v. Godson Eliona Moshi**, Civil Application No. 9 of 2017 (unreported) and **VIP Engineering and Marketing Limited (supra)**.

The Court held in the case of **VIP Engineering and Marketing Limited (supra)** that:

"It is settled law that, a claim of illegalities of the challenged decision constitutes sufficient reason for extension of time under Rule 8 (now Rule 10) of the Court of Appeal Rules, regardless of whether or not reasonable explanation has been given by the applicant under the Rules to account for the delay".

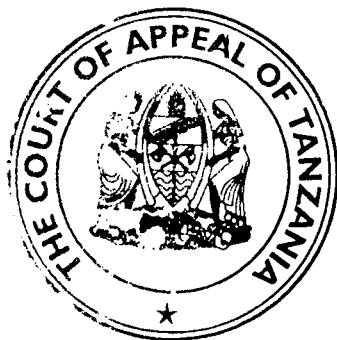
In line with the above exposition, I find merit in the application by the applicant. As a result, I grant the application with direction that, the applicant has to lodge his appeal within sixty (60) days from the date of this ruling. Costs to follow the event.

Order accordingly.

DATED at DAR ES SALAAM this 10th day of May, 2022.

O. O. MAKUNGU
JUSTICE OF APPEAL

The ruling delivered on this 13th day May, 2022, in the presence of Mr. Yahaya Njama holding brief for Mr. Mohamed Amini Mshana for the applicant and the respondent appeared in person, is hereby certified as a true copy of the original.




C. M. Magesa
DEPUTY REGISTRAR
COURT OF APPEAL