

IN THE COURT OF APPEAL OF TANZANIA
AT MUSOMA

CIVIL APPLICATION NO. 539 OF 2020

ONDIEK NUNDU APPLICANT

VERSUS

WILSON KASUKU SARONGE RESPONDENT

(Appeal from Judgment of the High Court of Tanzania at Musoma)

(Galeba, J.)

dated the 6th day of December, 2019

in

Land Appeal No. 31 of 2019

.....

RULING

9th & 14th June, 2022

MAKUNGU, J.A.:

The applicant is seeking extension of time within which to lodge an appeal to this Court against the judgment of the High Court of Tanzania at Musoma (Hon. Galeba, J as he then was) in the Land Appeal No. 31 of 2019 dated on 6th December, 2019. In Misc. Land Application No. 1 of 2020, in the High Court, the applicant sought an extension of time but, on 7th August, 2020 his application was dismissed for lack of merit, hence the present application as a second bite.

The application is by way of a notice of motion which is predicated under the provision of Rule 10 of the Tanzania Court of Appeal Rules,

2009 (hence "the Rules"). The same is supported by an affidavit of the applicant. The grounds for an extension of time have not been stated in the notice of motion as required by the law. The only reason was stated in the affidavit in paragraph 6 that the applicant failed to file his application on time due to the bad financial status which was facing him.

The application has been resisted by the respondent through an affidavit in reply sworn by the respondent.

When the application was placed before me for hearing, the applicant fended for himself while the respondent was represented by Mr. Thomas M. Makongo, learned advocate.

In support of the application, the applicant commenced his address by fully adopting the notice of motion as well as the affidavit in support thereof. As a lay person, briefly stated that he failed to file his application for leave to appeal to this Court on time due to the bad financial status which was facing him. He added that he had no money to engage an advocate to prepare legal documents for him on time, the reason which was out of his control and failed to handle it. He prayed his application to be granted.

The application was, as I said earlier, strongly resisted by the respondent. Mr. Makongo commenced his submission by fully adopting

his client's affidavit in reply, as well as the list of authorities desired to be relied upon. He then submitted that a financial constraint as stated by the applicant is not good cause to grant extension of time. He further submitted that in this application the scope of this Court is simply confined to see whether the applicant has shown good cause necessary to justify the granting of extension of time. He argued that the applicant failed to give account of those days commencing from the date when his first application was dismissed by the High Court to the time when this application was eventually filed in this Court. He prayed the application be dismissed with costs.

To buttress his argument above, he referred to me the reported decision of the Court in the case of **Yussuf Same and other v. Hadija Yussuf**, Civil Appeal No. 1 of 2002 (unreported).

In his brief rejoinder, the applicant had nothing much to submit, but to pray the Court to grant his application for the given reason.

As submitted by Mr. Makongo the learned advocate for the respondent earlier, I too see no cogent reason given to be termed as good cause in terms of the requirement under Rule 10 of the Rules. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of**

Tanzania, Civil Application No. 2 of 2010 (unreported), the following guidelines were formulated in considering what amounts to good cause:-

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

None of the guidelines stated herein above were justified by the ground given by the applicant neither in his notice of motion nor in his affidavit.

It is now trite law that the applicant has to account for each of the delayed days. See the case of **Mohamed Athumani v. Republic**, Criminal Application No. 13 of 2015 (unreported).

In the absence of cogent reasons as to why the applicant has failed to file his application for extension of time within time prescribed by Rule 45A (1) of the Rules, there cannot be any other better language other than holding that there has been negligence or sloppiness on the part of the applicant which dis-entitles him from benefiting the discretion of the

Court conferred upon it under Rule 10 of the Rules to be exercised in his favour.

As the record shows, the applicant waited for two months from 7th August, 2020 when his first application was dismissed to 7th October, 2020 when he attempted to file this application. He was required to file this application within 14 days from the day his first application was dismissed on 7th August, 2020.

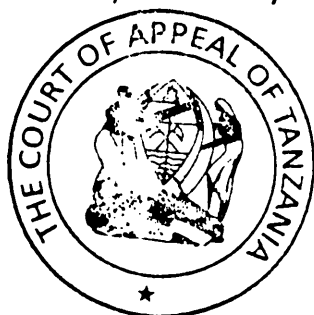
For the reason of the applicant's failure to show good cause, I am constrained not to exercise my discretion conferred upon me under Rule 10 of the Rules to grant his extension of time to file appeal. I therefore, find the application to be devoid of merit and hereby dismiss it.

Order accordingly.

DATED at MUSOMA this 13th day of June, 2022.

O. O. MAKUNGU
JUSTICE OF APPEAL

The Judgment delivered this 14th day of June, 2022 in the presence of the Appellant in person and Mr. Thomas Makongo, learned counsel for the Respondent, is hereby certified as a true copy of the original.



C. M. Magesa
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DEPUTY REGISTRAR
COURT OF APPEAL