

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

**CIVIL APPLICATION NO. 661/17 OF 2021**

**NATIONAL BANK OF COMMERCE..... APPLICANT**

**VERSUS**

**SAOLIGO HOLDINGS LIMITED..... 1<sup>ST</sup> RESPONDENT**

**MAGRETH JOSEPH .....2<sup>ND</sup> RESPONDENT**

**(Application for extension of time to appeal against the judgment  
and Decree of the High Court of Tanzania (Land Division)  
at Dar es Salaam)**

**(Mgetta, J.)**

**dated the 30<sup>th</sup> day of September, 2014**

**in**

**Land Case No. 79 of 2006**

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**RULING**

20<sup>th</sup> July, & 18<sup>th</sup> August, 2022

**KENTE, J.A.:**

On 1<sup>st</sup> August, 2017 the applicant herein the National Bank of Commerce Limited was granted leave by the High Court (Land Division) to appeal to this Court to challenge its decision in Land case No. 79 of 2006 which was handed down on 30<sup>th</sup> April, 2014. All things being equal and since the applicant had already lodged the notice of appeal on 1<sup>st</sup> December, 2015, in terms of Rule 90 (1) of the Tanzania Court of Appeal Rules, 2009 (hereinafter "the Rules"), she ought to have instituted the intended appeal not later than 30<sup>th</sup> January, 2016. However, for the reasons that will be laid bare in the course of time, the

applicant could not beat the prescribed statutory deadline. In the circumstances, as is mandatorily required under rule 10 of the Rules, by way of a Notice of Motion, the applicant has moved this Court to grant an extension of time within which she can appeal to challenge the above said decision of the High Court.

In her affidavit supporting the motion, the applicant has raised a litany of complaints against the High Court's decision and its Registry. I should however quickly point out that, in an abridged form, the applicant's grievances are essentially that, for a good cause she could not appeal in time and that the impugned decision of the High Court was fraught with some material illegalities.

Submitting in support of the application Mr. Donald Lucas Chidowu learned advocate who appeared along with Mr. Makarius Justine Tairo also learned advocate to represent the applicant, begun by giving a general overview of the principles of law governing any application of the present nature as evolved and developed by dint of case of law. Cognisant of the provisions of Rule 10 of the Rules under which the requirement to furnish good cause is an express condition to be established by the applicant, the learned counsel submitted that, the applicant had demonstrated that she was precluded from lodging appeal within the prescribed time on account of good cause. Relying on our

decision in **Fortunatus Masha v. William Shija and Another** [1997] TLR 154, Mr. Chidowu sought to convince the Court to find that, as opposed to actual delay, the facts and circumstances obtaining in the present case clearly show that the applicant was caught up in technical delays in so far as the original appeal was lodged in time but only to be found incompetent for one reason or another. In amplification of this point, Mr. Chidowu submitted that the above cited authority is relevant and applicable to the present application as the applicant had taken various steps in the pursuit of her right to appeal but only to find the appeal process incomplete because of the absence of a letter requesting for certified copies of proceedings, judgment and decree.

Like what we held in **Fortunatus Masha** (supra), Mr. Chidowu submitted that, in the present case, the delay to appeal was not occasioned by any lethargy on the part of the applicant who has always been vigilant and hard on the heels of her rights. The learned counsel put forward several reasons to substantiate the applicant's assertion. Weighing most heavily, according to Mr. Chidowu, is the fact that the applicant's advocate had written several letters and reminders to the Deputy Registrar of the High Court requesting for various documents necessary for purposes of appeal which were however, not forthcoming.

The learned counsel contended, rightly so in my view that, it was not possible for the applicant to lodge the present application before obtaining the documents required for preparation of the record of appeal and that the said documents were belatedly availed to her on 15<sup>th</sup> December, 2021.

On the basis of all these factors, Mr. Chidowu submitted that, the delay by the applicant to file appeal was not due to her indolence or negligence but rather it was due to the technicalities and the sheer irresponsiveness of the High Court Registry to the applicant's persistent requests.

As one would expect, the application was strongly resisted by the respondents Saoligo Holding Limited and Magreth Joseph. Contrary to what was submitted by Mr. Chidowu, Mr. Japhet Eliamini Mmuru learned advocate representing the respondents contended that, the applicant ought to have acted within the prescribed timeframe and that, as matters stand today, the applicant has not outlined all the steps which she claimed to have taken in the pursuit of her right to appeal. In the circumstances, Mr. Mmuru submitted, the Court cannot surmise that the applicant was diligent and prompt in making follow ups of the documents necessary for appeal purposes. Relying on our decision in the case of **Yusufu Same & Hawa Dada v. Hadija Yusufu**, Civil Appeal

No. 1 of 2002 (unreported), the learned counsel submitted that, an error made by an advocate through negligence or lack of diligence is not a sufficient cause of extension of time. He thus implored me to dismiss the application for want of merit.

It is perhaps relevant at this point in time to state that, in the determination of this application, the starting point is rule 10 of Rules which provides 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 authorised or required by these Rules, whether before or after the expiry 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 so extended".*

[Emphasis added]

A reading of the above-quoted provisions of the law makes it clear that, a Court can only extend the time limited by its Rules or by any decision of the High Court or tribunal, if a party seeking to have the time extended can establish that, for a good cause he was precluded from taking the necessary steps or doing the act within the time limit prescribed by the law.

In the present application, the applicant alleges that she was not able to appeal in time because of the procedural technicalities and the inordinate delay of the High Court Registry to issue her with the documents which were necessary for appeal purposes.

While gracefully admitting the glaring fact that the High Court Registry had immensely contributed towards the applicant's failure to lodge appeal within the time limit prescribed by the law by not availing her with the documents required for one to pursue a meaningful appeal, Mr. Mmuru conveniently sort of shifted the battle front and concentrated on the applicant's previous lawyer's inept handling of the case.

With due respect to Mr. Mmuru, I do not think that would be fair to the applicant. As stated at the beginning of this ruling, all things being equal, the applicant was supposed to have lodged her intended appeal not later than 30<sup>th</sup> January, 2016. I know that parties to this application had some judicial fights over the applicant's failure to take necessary steps immediately after delivery of the impugned judgment of the High Court as to result, into among other things, the ruling previously mentioned dated 1<sup>st</sup> August, 2017 giving leave to the applicant to appeal to this Court. In effect, the above-said ruling of the High Court had closed the chapter on the applicant's failure to take action immediately after delivery of the High Court judgment and on

that account, the respondents have no reason bring the already settled part of the dispute into resuscitation. Instead they should put behind the period between the 30<sup>th</sup> September, 2014 and 30<sup>th</sup> January, 2016 and nimbly let bygones be bygones.

Reverting to the period post 30<sup>th</sup> January, 2016, whereas the applicant has utterly incontrovertible evidence demonstrating on one hand that she was pestering the Deputy Registrar of the High Court relentlessly requesting for various documents necessary for purposes of appeal, on the other hand, it is an undeniable fact that the said documents were not forthcoming. In other words, it is the common and material denominator between the parties herein that, the applicant's failure to appeal within the prescribed period was mainly if not solely attributable to the unexplained failure of the High Court to issue her with the documents necessary for appeal purposes.

Now, if the phrase "good cause" is to be construed in its ordinary sense, it seems to me very simple and indeed very fair to hold as I hereby do that, after being given leave to appeal, the applicant was precluded from doing so on account of the reasons and circumstances which were beyond her control. To put it differently, after lodging the notice of appeal on the 1<sup>st</sup> December, 2015 the applicant was

subsequently put in a grip of ineluctable suspense by reason of the High Court's unexplained inaction.

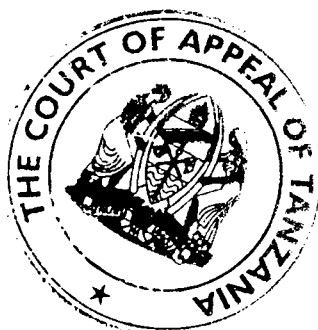
On the whole therefore, I find merit in this application and, without recourse to the second limb of the applicant's complaint alleging existence of illegality in the impugned judgment of the High Court which in my opinion, should remain the exclusive domain of the full Court, I allow the application and direct the applicant to lodge the intended appeal within sixty days of this ruling if she is still quite keen on doing so. The costs of this application shall be in the cause.


It is so ordered.

**DATED at DAR ES SALAAM this 15<sup>th</sup> day of August, 2022.**

P. M. KENTE  
**JUSTICE OF APPEAL**

The Ruling delivered this 18<sup>th</sup> day of August, 2022 in the presence of Ms. Hamisa Nkya, learned counsel for the Applicant and Mr. Laurent Ntanga, learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**