

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

CIVIL APPLICATION NO. 312 OF 2021

RIMISHO BOBOSHO SHINE..... APPLICANT

VERSUS

KWIRINE MICHAEL SHINE..... RESPONDENT
**(Application for extension of time to lodge an appeal from the decision
of the High Court of Tanzania Moshi at Moshi)**

(Mutungi, J)

dated the 26th day of May, 2020

in

Land Appeal Case No. 9 of 2015

RULING

6th & 12th July, 2023

KIHWELO, JA.

On 11.05.2021 the applicant filed a Notice of Motion under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) for the following orders:

"The applicant be granted an order for extension of time to lodge an appeal to this Court against the decision of the High Court of Tanzania (Moshi District Registry) at Moshi (Hon. Mutungi, J.) dated the 26th day of May 2020 in Land Appeal No. 9 of 2015."

In support of the application for extension of time, the applicant lodged an affidavit which, on the basis of paragraphs 3, 4, 5 and 6 of

that affidavit and his written submission lodged in Court on 21.06.2021, the applicant urged me to find that since the applicant was diligently and acted with promptness in pursuing leave at the High Court in order to appeal to this Court, the application should be granted.

Illustrating, the applicant contended that, aggrieved by the impugned decision the applicant lodged a notice of appeal on 04.06.2020 which was well within the time prescribed by law and the same was served upon the respondent within 14 days as required. The applicant further on 01.06.2020 requested for copies of judgment, decree, proceedings and any other relevant documents which were supplied to him on the same day. The applicant further submitted that, since leave to appeal to this Court is mandatory, the applicant was compelled to lodge an application for leave through Misc. Application No. 46 of 2020 and the High Court (Mkapa, J.) granted it on 07.05.2021 and the ruling was supplied to the applicant on 11.05.2021. Since time to lodge the appeal to this Court expired on 04.06.2020, the only remedy available to the applicant was to file the instant application for enlargement of time to lodge the appeal which

was lodged the same day on 11.05.2021, when the applicant was supplied with the ruling in Misc. Application No. 46 of 2020.

The applicant impressed upon me that, since the delay to lodge the appeal was not occasioned by the applicant's negligence but rather inevitable judicial processes in obtaining leave to appeal to this Court, then this application be granted and costs of this application abide by the result of the intended appeal.

The respondent on his part, had nothing useful to address me in opposing the application but merely objected generally to the grant of the application. It is to be noted that the respondent neither lodged affidavit in reply nor any written submission opposing the application.

It is not insignificant to state that, the position of the law is settled and clear that, where the respondent does not lodge an affidavit in reply despite being served, it is taken that he/she does not dispute the contents of the applicant's affidavit. See, for instance, **Finn Von Wurden Petersen and Another v. Arusha District Council**, Civil Application No. 562/17 of 2017 and **Ultimate Security (T) Limited v. Chande Ally Lubugile and Others**, Civil Application No. 428/01 of 2021 (both unreported), in which we emphasised that,

the respondent who appears at the hearing without having lodged an affidavit in reply is precluded from challenging matters of fact, but he can challenge the application on matters of law only.

The issue before me is whether the applicant has disclosed sufficient reasons for extension of time as required under rule 10 of the Rules. This calls for exercise of the Court's discretionary powers which has to be applied judiciously though. In so doing, the court has to look at the circumstances in each case guided only by principles of justice, equity and common sense. As such, it is neither possible nor desirable to lay down and follow any hard and fast rules as there is *no-one-size-fits all* criteria.

In the instant application, I have been humbly requested to consider, whether the applicant acted diligently and promptly in pursuing the matter before the court. I take it as undisputed that diligence is now regarded as one of the factors to be considered in determining whether or not sufficient cause exists for extension of time under rule 10 of the Rules. See, for instance **Zuberi Mussa v. Shinyanga Town Council**, TBR Civil Application No. 3 of 2007 (unreported). I agree with the applicant that in terms of section 47 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 a person who

is aggrieved by the decision of the High Court in exercise of its appellate jurisdiction like in the matter before me, has to apply and be granted leave by the High Court or this Court.

It is not insignificant to emphasize further that, the Court's discretion in deciding whether or not to extend time must be exercised judicially and not arbitrarily or capriciously, nor should it be exercised on the basis of sentiments or sympathy. Fundamentally, the said discretion must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error, but should not be designed at assisting a person who may have deliberately sought it in order to evade or otherwise to obstruct the cause of justice

In the instant application, the circumstances leading to the delay are clearly stated in paragraphs 3, 4, 5 and 6 of the affidavit supporting the notice of motion. Essentially, the applicant is stating that since leave to appeal to this Court is mandatory, the applicant was compelled to lodge an application for leave which was granted on 07.05.2021 and the records were supplied to the applicant on 11.05.2021. It is further on record that, the instant application was

lodged by the applicant the same day he was supplied with the ruling that granted him leave.

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 and hold that, the applicant who has been in court corridors pursuing his case was diligent and acted with reasonable promptness in quest for justice. This Court has considered the issue of promptness in lodging the application as one of the grounds for granting the application for enlargement of time. In the **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."

In the result, I find and I am satisfied that the applicant has demonstrated sufficient reasons for the delay in filing his appeal. He is

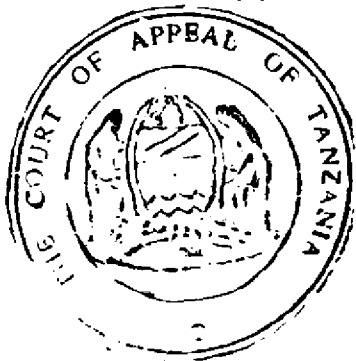
therefore entitled to the grant of the extension. The application is therefore allowed. The applicant is to file his appeal within thirty (30) days from the date of this order. Costs shall abide the result in the intended appeal.

It is so ordered.

DATE at MOSHI this 11th day of July, 2023

P.F. KIHWELO
JUSTICE OF APPEAL

The Ruling delivered this 12th day of July, 2023 in the presence of the Respondent in person and in the absence of the Applicant who was reported sick by his relative Mr. Leon Frangs Shine, is hereby certified as a true copy of the original.



A handwritten signature in black ink, appearing to read "A.L. KALEGEYA".

A.L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL