

IN THE COURT OF APPEAL OF TANZANIA
AT MOSHI
CIVIL APPLICATION NO. 446/05 OF 2021

WILFRED KISAKISA NJIROAPPLICANT

VERSUS

JAMES JOHN CHAO 1ST RESPONDENT

AMAN JOHN CHAO 2ND RESPONDENT

JOSEPH MICHAEL 3RD RESPONDENT

**(An application for order of Extension of time to file an appeal against the
decision of the High Court of Tanzania at Moshi)**

(Mwenempazi, J.)

dated 1st day of June, 2021

in

Miscellaneous Land Application No. 36 of 2019

RULING

6th & 18th July, 2023

RUMANYIKA, J.A.:

The application is for extension of time which is made under rules 10, 47 and 48 (1), (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The indulgence of the Court is sought to enlarge time for the applicant to file an appeal against the decision of the High Court of Moshi at Moshi in Misc. Land Application No. 36 of 2019 on 1st June, 2021. The application is supported by an affidavit of Wilfred Kisakisa Njiro, the applicant. The respondents did not file affidavits in reply nor appear in the Court at the hearing, as shall be shown below.

It all began at the District Land and Housing Tribunal of Moshi, at Moshi (the DLHT) in Land Case No. 1 of 2011 where the applicant lost the battle as an applicant. Aggrieved by that decision, he appealed to the High Court of Tanzania, at Moshi vide Land Appeal No. 5 of 2012 which was dismissed for being unmerited. Aggrieved by that decision, the applicant intended to appeal against it but for the time bar, he filed a two-fold Miscellaneous Land Application No. 36 of 2019 seeking an order for extension of time to file notice of appeal and a certificate on point of law. That application too was not a success as it was dismissed for want of merits on 1st June, 2021. He is aggrieved by that decision and intends to challenge it but he could not lodge notice of appeal timely. The reason for the delay is that, immediately after the delivery of the impugned decision he fell sick and was admitted between 10th June 2021 and 1st July, 2021 the dates inclusive. He also contended that, thereafter, on diverse dates between 2nd July, 2021 and 27th August, 2021 his sickness persisted being attended at Himo Dispensary-Cogi. It is also alleged that, on his full recovery, he filed the present application for extension of time to file an appeal, as above indicated.

At the hearing of the application, the applicant appeared in person without legal representation whereas, with an exception of the 3rd

respondent in whose respect the applicant withdrew the application, the rest did not enter appearance, though they were dully served. They refused service, as indicated in the affidavit sworn by one Onesmo P. Onesmo, the Court Process Server which is appended with copies of the returned summons. On that basis therefore, I ordered for the hearing of the application in their absence in terms of rule 63 (2) of the Rules.

Upon adopting the notice of motion and the supporting affidavit, without more, the applicant urged me to consider the illness, as he deposed at paragraph seven of the affidavit, as good cause for the grant of extension of time because that illness prevented him from appealing the said decision within time. He referred to me the alleged respective medical chits (not marked) appended to the application to justify his delay.

Considering notice of motion, the applicant's affidavit and submission, the issue which is now before me for consideration is whether the application is properly before the Court and tenable, after the High Court refused him an extension of time.

To answer the above paused issue, I will reproduce rule 45A (1) which has to be read together with rule 10 of the Rules governing the

filing of second bite applications as is here, for extension of time. Rule 45A (1) reads as follows:

"Where an application for extension of time to:

- (a) lodge a notice of appeal*
- (b) apply for leave to appeal; or*
- (c) apply for a certificate on point of law, is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time"*

What can be discerned from the above quoted rule is that, the applicant has no room to appeal against an order of the High Court in Miscellaneous Land Application No. 36 of 2019 which refused him an extension of time at the first instance to file a notice of appeal to the Court in respect of High Court Land Appeal No. 5 of 2012. He thus ought to have filed a second bite application, in terms of Rule 45A (1) of the Rules, instead of taking steps towards appealing the said decision which he did not. That point thus, is sufficient to dispose of the application.

However, assuming that the application is tenable before me, which is not the case, then the following issue could be whether he has shown good cause to warrant an order for extension of time. Under rule 10 of the Rules, the prerequisite condition for the Court to grant it is that

there must be good cause shown by the applicant. What amounts to good cause is not provided under any statute. It depends on the circumstances of each particular case, as the Court has pronounced itself from time to time including in **Sumry High Class Ltd And Another v. Musa Shaibu Msangi**, Civil Application No. 403/16 of 2018 (unreported).

In the instant case, the applicant asserts that what caused the delay in filing the appeal is that, he fell sick and on that account was admitted at Himo-Dispensary-Cogi on 10th June 2021. That, this was immediately after the decision of the High Court in Miscellaneous Land Application No. 36 of 2019 was delivered (a copy of medical chit and admission form are attached to the application). However, according to the supporting affidavit, the last day he attended at the dispensary was 27th August, 2021 and thereafter filed the instant application on 1st September, 2021 which is about four days after his recovery. He did not account for each day of them.

Moreover, from the face of it, it seems to me that, this application was ready for filing on or by 18th August, 2021. Since the supporting affidavit was verified on that date while the applicant was allegedly sick being hospitalized at the said dispensary. It sounds to me that, he swore

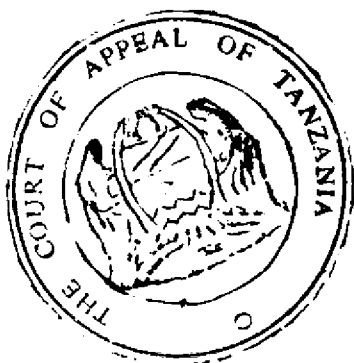
the affidavit foreseeing the alleged illness which is quite unusual. This is but unacceptable fabrication of facts hence the likelihood of the applicant telling lies which reduces it into being no affidavit at all. That is to say, the applicant has failed to show good cause to warrant the grant of extension of time.

In the result, the application falls short of merits and it is dismissed. I make no order for the costs because the application has been determined *ex parte*.

DATED at **MOSHI** this 18th day of July, 2023.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 18th day of July, 2023 in the presence of the Applicant in person, unrepresented and in the absence of the respondents, is hereby certified as a true copy of the original.




A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL