

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

CIVIL APPLICATION NO. 290/08 OF 2020

KAMWANYA LUVUMWA.....APPLICANT

VERSUS

ATHUMANI RUBINDO (The Administrator of the
estate of the late **HUSSEIN KIHENA**).....**RESPONDENT**

**(Application for extension of time from the decision of the High Court of
Tanzania at Tabora)**

(Utamwa, J.)

dated the 25th day of July, 2018

in

Misc. Civil Application No. 51 of 2016

.....

RULING

19th September, 2023

MASOUD, J.A.:

This is an application for extension of time within which to file an application for certificate of point of law to this Court as a second bite. The application is brought under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is supported by an affidavit of the applicant supporting the application.

In the said affidavit the applicant advanced a number of reasons in respect of which he is moving the Court to extend the time. With such reasons, the affidavit in support has shown that the applicant's

application as a first bite, that is Misc. Land Case Application No. 50 of 2018, was dismissed by Mallaba J. on 26th March, 2019.

The reasons advanced could simply be stated as thus. Firstly, that the applicant's advocate, one, Method R.G. Kabuguza withdrew himself from representing him. Secondly, that the applicant is an old man aged 84 who has since March, 2018 been suffering from leg diseases due to old age. And thirdly, that the applicant has since April, 2019 been taking care of his grandson who is critically suffering from stroke. There are, seemingly, other reasons, namely, ignorance of law on the part of the applicant, and economic hardships the applicant is facing which resulted in his inability to engage an advocate.

When the application came up for hearing, the applicant and respondent appeared in person unrepresented. The respondent did not file an affidavit in reply. He complained that he was not served with the application but only the summons for today's hearing. He was however ready to be served in court and be heard on the application to the extent possible in the circumstances. Although the applicant argued that the respondent was served but refused service, there was no proof of such service that was shown on the record. Consequently, the respondent was served in the Court with the application.

Upon hearing the parties, the applicant urged me to consider granting the extension based on the reasons shown in the affidavit as was also maintained in his subsequent rejoinder. It is not without relevance to say that the applicant further added from the bar that the delay was a result of family meetings which sought to be held with a view to settling the matter amicably.

On his part, the respondent albeit in a layman's language and formulation had it that the application has not met the requirements of the law in so far as it did not spell out good reasons warranting the Court to extend the time. He went on to say that the delay is inordinate if one reckons from 26th March, 2019 when the first application was delivered and when the instant application was filed. For such reasons, he invited me to dismiss the application.

I have had regard to the strength of the rival arguments from both parties. It is trite law that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. The discretion is judicial and must be exercised according to the rules of reason and justice. See, **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported).

In terms of rule 10 of the Rules, the Court may extend the time upon showing of good cause for the failure to act in time. The question is whether the applicant has in the circumstances shown good cause.

Considering all of the reasons advanced in paragraph 7, 8, and 9 of the affidavit in support, I could not see how they sufficiently accounted for the whole period of delay if I reckon from 26th March, 2019 when the application for the certificate of delay (first bite) was dismissed by Mallaba, J. There was nothing in the affidavit or the applicant's oral submission showing that the reasons which were not substantiated in any way cater for the entire period of delay.

It is crucial to note that the application for second bite ought to be lodged within 14 days of the ruling by Mallaba J., according to rule 45A (c) of the Rules. It is also important to bear in mind that the instant application was filed on the 11/05/2020. It was thus lodged after a lapse of 438 days which should have been sufficiently accounted for by the applicant.

Despite such inordinate delay, the reasons advanced were not shown as to how they account for the entire period of delay or at least supported by any proof on the record. For example, the period that he alleges to be suffering from leg diseases is the same period that he has

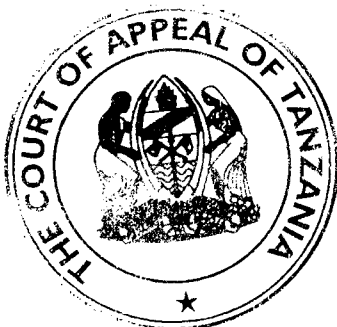
allegedly been taking care of his sick grandson. One would wonder whether the applicant could really not take the necessary steps. See **Ausi Mzee Hassan vs R**, (Criminal Appeal No.69/01 of 2022) [2023] TZCA 247. I am at this juncture satisfied that the applicant has failed to establish that the delay was due to good cause to warrant the exercise of this Court's discretion in favour of the sought extension.

In conclusion, therefore, the application for extension of time within which to file an application for certificate of point of law is without merit and has to fail. I do hereby dismiss it. In the circumstances, I make no order as to costs.

DATED at **TABORA** this 19th day of September, 2023.

B. S. MASOUD
JUSTICE OF APPEAL

The Ruling delivered this 19th day of September, 2023 in the presence of Applicant and Respondent appeared in person, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL