

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

**CIVIL APPLICATION NO. 318/13 OF 2021**

**HASSAN KIBASA .....APPLICANT**

**VERSUS**

**ANGELISIA CHANG`A ..... RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Iringa)**

**(Shangali, J.)**

**dated the 9<sup>th</sup> day of October, 2015**

**in**

**Misc. Land Application No. 27 of 2012**

.....

**RULING**

4<sup>th</sup> & 5<sup>th</sup> December, 2023

**NGWEMBE, J.A.:**

Hassan Kibasa, the applicant herein has lodged this application on 19<sup>th</sup> May, 2021 praying for extension of time to serve the respondent with notice of appeal and a letter requesting for copies of proceedings, ruling and drawn order in respect of the intended appeal to this Court. The application is brought in this Court by a way of notice of motion under Rule 10 and 48 (1) & (2) of the Tanzania Court of Appeal Rules 2009 (the Rules). It is supported by two affidavits, that is the affidavit affirmed by the applicant and the affidavit sworn by Jally Willy Mongo an advocate of the applicant. On the other hand, the respondent opted not to file an affidavit in reply.

It is on record that, this matter has a rich history. It traces back to the applicant's unsuccessful suing the respondent before Ruaha Ward Tribunal in year 2010 in respect of Plot No. 17 Block A, Ipogolo Area. Being aggrieved by such decision, the applicant appealed to Iringa District Land and Housing Tribunal through Land Appeal No. 76 of 2010. Again, his appeal was unsuccessful, it was dismissed on 05/03/2011.

However, his appetite to challenge the impugned decision never stopped, but this time he did not lodge his appeal timely, hence he sought for extension of time before the High Court via Misc. Land Application No. 27 of 2012. Unfortunate may be to the applicant; his application was dismissed on a ruling delivered on 09/10/2015. Thereafter, he proceeded to file notice of appeal on 15/10/2015 and a letter requesting for copies of ruling and drawn order before the High Court. At the same time, he filed an application for leave to appeal to this Court. The application for leave was struck out on 02/09/2016. Again, he applied for review through Misc. Land Application No. 40 of 2016, which review was again dismissed on 31/03/2017.

According to what he deposes in the affidavit, the applicant was later advised by another advocate that, there was no need of applying for leave to appeal to the Court, instead he would file an application for revision against the High Court's decision. Upon such advice, successfully, lodged

Civil Application No. 405/13 of 2017 whose decision nullified all the proceedings, rulings and orders in Misc. Land Application No. 15 of 2016 and Misc. Land Application No. 40 of 2016. He was thus to proceed with the appeal against the decision in Misc. Land Application No. 27 of 2012.

Moreover, he discovered that, the notice and a letter requesting for copies before the High Court were inadvertently never served to the respondent, thus, preferred this application for extension of time to serve the respondent.

At the hearing of this application today, the applicant procured representation of Mr. Jally Willy Mongo learned advocate, while Dr. Rwezaula Kaijage also learned counsel appeared for the respondent. In supporting the application, Mr. Mongo adopted the contents of the two affidavits in support to the notice of motion to form part of his submission. Proceeded to refer this Court to the ruling in Civil Application No. 551/01 of 2019, **Andrew Athuman Ntandu and Another Vs. Dustan Peter Rima (administrator of Oeter Joseph Rima)**. Thus, rested by a prayer for extension of time.

In reply, Dr. Rwezaula conceded to the application by raising three issues that; the affidavits of the applicant have disclosed good cause for delay, thus the respondent has no reason to oppose it; second, throughout, the applicant was prompt all the time; and third is the need

for want of justice to both parties. Added that parties in this dispute have been in loggerhead over the suit plot of land since 2010 to date. Having so said, he rested by a prayer for costs.

In rejoinder, Mr. Mongo reiterated to his submission in chief and proceeded to dispute on the prayer for costs, as the applicant's pleadings did not pray for costs either.

Considering strictly on the spirit of rule 10 of the Rules, it is clear that, extension of time can be granted by this Court upon the applicant's demonstrating good cause. The term "good cause" is subjective, based on circumstance of case-to-case bases. It has met with numerous interpretations from this Court including the case of **NBC Ltd Vs. Sao Liho Holdings Ltd & Another**, Civil Application No. 267 of 2015 (Unreported); and **Jumanne Hassan Vs. Republic**, Criminal Application No. 23 of 2013 (Unreported) where the Court reasoned that:

*"What amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements defined good cause to mean reasonable cause which prevented the applicant from pursuing his action within the prescribed time"*

Mr. Mongo in his submission together with the contents of the two affidavits, plead inadvertence as the main reason for his failure to serve

the respondent timely. The applicant also has explained how he suffered and wasted time by actively instituting irrelevant applications. It is evident on record that the applicant was diligently engaged in the struggle for justice in the corridors of the courts, but on a wrong forum.

It is a rule of law that, the notice of appeal and letter requesting for court's documents are mandatorily to be served to the respondent within 14 and 30 days respectively, from the date of institution in the Court. Rule 84 of the Rules, provide mandatory requirement to serve the respondent and all persons who seem to him to be directly affected by the intended appeal.

In respect to this application, the respondent will directly be affected by the intended appeal. Therefore, serving her with a notice of appeal and a letter is mandatory.

The applicant has raised inadvertence as good cause for his delay. Inadvertence is excusable as was so decided by this Court in the case of

**Michael Lessani Kweka vs. John Eliafye [1997] T.L.R. 152** held: -

*"Although generally speaking a plea of inadvertence is not sufficient, nevertheless I think that extension of time may be granted upon such plea in certain cases, for example, where the party putting forward such plea is shown to have acted reasonably diligently to discover the omission and*

*upon such discovery, he acted promptly to seek remedy for it"*

The same position was repeated in many precedents including the case of **Elias Masija Nyang'oro & Others vs. Mwananchi Insurance Co. Ltd** (Civil Application 552 of 2019) [2021] TZCA 61, which is much similar to the application at hand. In that case, the applicant inadvertently failed to serve the respondent with the record of appeal. The Court considered the circumstance and how the applicant acted promptly upon discovery that the records were not served to the respondent, and proceeded to grant the application to serve the respondent.

I have considered the circumstance of this application and observed that, though the applicant had spent much of his time in filing some incompetent or unnecessary applications, he genuinely believed to be the correct recourse. When the applicant on 17/05/2021 noticed the fact that, the notice of appeal and letter requesting for documents were not served to the respondent, on 19/05/2021 he lodged this application for extension of time. It was only two days period of delay. The applicant therefore acted promptly to remedy the omission.


Considering that the applicant acted promptly and that inadvertence committed by the previous advocate went unnoticed by the applicant until when the new advocate realized it after perusing the court files, therefore,

I am satisfied that, the applicant has furnished good cause for delay of two days. To preserve the interest of justice as was submitted by the Dr. Rwazaula, I accede to the applicant's prayer for extension of time.

All said and reasoned, the applicant is granted fourteen (14) days extension of time from the date of this ruling to serve the respondent with notice of appeal and a letter requesting for copies of proceedings, ruling and drawn order of the High Court in Misc. Land Application No. 27 of 2012. The circumstance of this application justifies to order each party to bear his own costs.

It is so ordered.

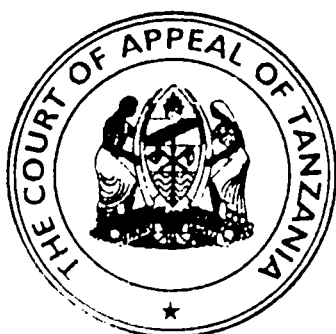
**DATED** at **IRINGA** this 5<sup>th</sup> day of December, 2023.



P. J. NGWEMBE

**JUSTICE OF APPEAL**

The Ruling delivered this 5<sup>th</sup> day of December, 2023 in the presence of Mr. Jally Mongo, learned counsel for the Applicant, and Dr. Rwezaula Kaijage, learned counsel for the Respondent, is hereby certified as a true copy of the original.



R. W. CHAUNGU

**DEPUTY REGISTRAR**  
**COURT OF APPEAL**