

IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

CIVIL APPLICATION NO. 66/17 OF 2022

JUSTINE F. BURURE.....APPLICANT

VERSUS

HAJI R. MWIKALO.....1ST RESPONDENT

JACK PEMBA.....2ND RESPONDENT

**(Appeal from the judgment and decree of the High Court of
Tanzania (Land Division) at Dar es Salaam**

(Mansoor, J.)

dated the 30th day of January, 2015

in

Land Application (Revision) No. 6 of 2013

RULING

24th & 27th April, 2023

MAKUNGU, J.A.:

At the hearing of this application, Mr. Francis Mwita, learned advocate represented the applicant and also held brief for Mr. Abdon Rwegasira, learned advocate for the 1st respondent. The 2nd respondent has never participated in any of the court proceedings in the lower courts and for that reason was not served with copies of this application and the notice of hearing.

The application is pursuant to Rule 10 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). It is supported by the affidavit of Mr. Francis M. Mwita, the advocate of the applicant.

Submitting in support of the application, Mr. Mwita commenced his submission by fully adopting the contents of the notice of motion, the supporting affidavit and the applicant's written submission. He then prayed the Court to grant the application since the 1st respondent did not oppose it.

I have examined the notice of motion and taken account of the supporting affidavit and the written submission made by the applicant. From the sworn affidavit by the applicant, I managed to gather two major reasons advanced by the applicant, the first reason that his delay was technical delay. In my view this reason has no merits on the ground that, leave to file the notice of appeal out of time was granted on 20th October, 2021 and prior to that it was shown that the applicant had already provided with the copies of the proceedings, ruling, drawn order even the certificate of delay in respect of the impugned decision,

thus the only missing record was the proceedings, ruling and drawn order in Misc. Application No. 722 of 2020 for leave to file the notice of appeal out of time.

By reading the record, it is shown that the notice of appeal was filed on 26th October, 2021 therefore the applicant had sixth (60) days to have his appeal been filed. However, it was averred that he got the copies of the proceedings, ruling and drawn order in respect of Misc. Land Application No. 722 of 2020 which are vital to form part of the record in the intended appeal on 7th February, 2022 and on 28th February 2022 it was when the instant application was filed. I have the view that the period from 7th February, 2022 up to 28th February, 2022 was not accounted for by the applicant. It is my considered view that the lapse of almost 21 days defeat the so-called technical delay as the applicant failed to account for that period.

The second reason by the applicant was on illegalities in the decision of the High Court in Land Revision No. 6 of 2013. It is the applicant averment that the impugned decision faulted the applicant for forgery and the same was not proved beyond

reasonable doubt in a competent court of law. In my view this reason has merit and warrant the Court to extended time so as the same may be rectified in appeal. The Court in the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185, had this to say:

"In our view when the point of issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the illegality be established, to take appropriate measures to put the matter and the record right."

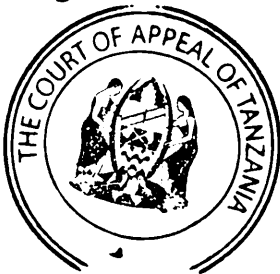
In view of the aforesaid reasons, I am satisfied that the applicant has shown good cause warranting the grant of the application for the applicant to file his appeal against the decision of the High Court of Tanzania Dar es Salaam, Land Division, in Misc. Application (Revision) No. 6 of 2013 dated 30th January, 2015, out of time. The applicant to file his appeal not

later than 30 days from the date of this Ruling. I make no order as to costs.

DATED at **MOROGORO** this 25th day of April, 2023.

O. O. MAKUNGU
JUSTICE OF APPEAL

This Ruling delivered this 27th day of April, 2023 in the presence of Mr. Benjamin Jonas, learned counsel for the Applicant holding brief for Mr. Francis Mwita and in the absence of the respondent, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL