

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION No. 235/17 OF 2021**

**DALIA BURHAN NINDI.....APPLICANT**

**VERSUS**

**ZAINAB ISMAIL MSAMI.....RESPONDENT**

**(Application for extension of time within which to lodge an appeal from  
the decision High Court of Tanzania (Land Division) at Dar es Salaam)**

**(Wambura, J.)**

**dated the 7<sup>th</sup> day of September, 2018**

**in**

**Land Appeal No. 118 OF 2017**

**.....**

**RULING**

*22<sup>nd</sup> & 27<sup>th</sup> February, 2023*

**KIHWILO, J.A.:**

The applicant represented by Mr. Mluge Karoli Fabian, learned counsel by way of notice of motion filed on 9<sup>th</sup> June, 2021 under rules 10 and 48(1) and (2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), seeks from the Court orders extending the time within which to lodge an appeal to the Court against the decision of the High Court of Tanzania (Land Division) at Dar es Salaam in Land Appeal No. 118 of 2017 dated 7<sup>th</sup> September, 2018. The notice of motion is supported by an affidavit of the applicant in person, which was wholly adopted by Mr. Mluge, in his submissions.

Principally, the counsel argued that the applicant's delay to lodge an appeal was occasioned by delay in obtaining certified copies of proceedings and endorsed exhibits of the District Land and Housing Tribunal in Land Application No. 449 of 2011 (the tribunal) and therefore, she could not prepare the record of appeal in good time as the certified proceedings were supplied to her on 26<sup>th</sup> May, 2021. Further to the above, the counsel argued that, the applicant sought for, and was granted leave to appeal to the Court, in Miscellaneous Land Application No. 629 of 2018, but cannot proceed with appeal processes unless enlargement of time to file the appeal is granted by this Court. He stressed that, the delay to lodge the appeal is neither a result of professional negligence nor inaction on the part of the counsel or applicant and that, there are triable issues worthy of consideration by the Court. To support his proposition, the learned counsel cited to us the case of **Dr Ally Shabhay v. Tanga Bohora Jamaat** [1997] T.L.R 305 and **Michael Lessani Kweka v. John Eliafye** [1997] T.L.R 152. He rounded off his submission by praying that, the application be granted and that costs in the application abide the results of the intended appeal.

On the adversary side, the application was opposed by the respondent who lodged an affidavit in reply affirmed by the applicant in

person, which was wholly adopted along with her submissions. Essentially, the respondent is resisting the application on account of negligence of the applicant and her advocate who delayed to lodge the appeal to the Court, having been granted leave to appeal on 9<sup>th</sup> March, 2020 in Miscellaneous Land Application No. 629 of 2018 and insistently submitted that, the applicant has not demonstrated sufficient cause to warrant the Court exercise its discretion in awarding the extension of time. She made, reference to previous decisions, in the case of **Ratnam v. Cumarasamy** (1965) 1 WLR 10, **The Registered Trustees of the Archdiocese of Dar es Salaam v. Chairman Bunju Village Government and 11 Others**, Civil Appeal No. 147 of 2000, **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (both unreported) and **Kalunga and Company Advocates v. National Bank of Commerce** (2006) T.L.R. 235 to buttress her point. The respondent, finally contended that, the application has nothing solid to move the Court exercise its discretion but rather it is calculated to create injustice on the part of the respondent by delaying her to administer the estate of her late husband. She therefore implored Court to dismiss the application with costs.

I wish to start by reaffirming that, the court's discretion to extend time under rule 10 of the Rules, only comes into existence after sufficient reasons for extending time to have been established. In determining whether sufficient reason for extension of time exists, the court seized of the matter should take into-account not only the considerations relevant to the applicant's inability or failure to take the essential procedural step in time, but also any other considerations that might impel a court of justice to excuse a procedural lapse and incline to a hearing on the merits. Such other considerations will depend on the circumstances of the individual cases and include, but are not limited to, such matters as: the promptitude with which the remedial application is brought, whether there was manifest breach of the rules of natural justice in the decision sought to be challenged on the merits, and the prejudice that may be occasioned to either party by the grant or refusal of the application for extension of time. This broad approach is preferable as a judicial discretion is a tool, or device in the hands of a court for doing justice or, in the converse, avoiding injustice.

In the instant application, the record and submissions establish that; the appellant, who filed a land dispute against the respondent and four others not part to this application, in Land Application No. 449 of 2011

before the tribunal, objecting to the inclusion of a house at Plot No. 15, Block 3, Hananasifu Area, Kinondoni Municipality within Dar es Salaam, alleging that, the suit house belonged to her as it was bought by her late father, Burhan Seif Nindi. On the other hand, the respondent gallantly challenged the claim by the appellant stating that, the house belonged to her late husband, Burhan Nindi and therefore, was part of the deceased estate. At the end of the day, the respondent lost the case before the tribunal. Disgruntled, the appellant knocked the doors of the High Court, Land Division in Land Appeal No. 118 of 2017 seeking to challenge the decision of the tribunal. Upon hearing the parties, the learned High Court Judge dismissed the appeal and went further to order that, the suit property be included in the list of properties to be administered by the administrator of the deceased estate.

Unsubdued, the applicant lodged an application for leave to come to this Court in Miscellaneous Land Application No. 629 of 2018 which was granted by Maghimbi, J. on 9<sup>th</sup> March, 2020 in granting leave the learned Judge had the following to say:

*"Having gone through the records of this application and the parties' submissions therein, I have noted that there is a point of jurisdiction that was raised on whether the matter was a probate matter or land dispute*

*and it is alleged that the applicant sued the wife of the deceased over the suit property without joining the administrator of the estate. There are two conflicting decisions between the trial tribunal and the first appellate court. This is sufficient ground to grant leave to the applicant to appeal to the Court of Appeal. Owing to that, the applicant is hereby granted leave to appeal to the Court of Appeal against the decision of this court in Land Appeal No. 118 of 2017.”*

The applicant since 11<sup>th</sup> September, 2018 lodged the notice of appeal but could not proceed with lodging the appeal owing to the missing certified proceedings of the tribunal which were supplied on 26<sup>th</sup> May, 2021 which compelled the applicant to lodge the instant application for enlargement of time to lodge the appeal on 9<sup>th</sup> June, 2021.

In my considered opinion, upon perusal of the records, the applicant's failure to lodge the appeal on time has good cause behind, as he was not supplied with certified copies of the proceedings of the tribunal which clearly indicated that they were certified on 26<sup>th</sup> May, 2021. The records also, show that, the applicant made determined efforts to pursue the matter including writing letters and following up those certified copies and more important, lodging the instant application within two weeks

upon receiving certified copies of the proceedings of the tribunal. I have detailed the chronological sequence of those attempts to bring this out.

As alluded before, in determining whether sufficient reason for extension of time exists, the court seized of the matter should take into account not only the considerations relevant to the applicant's inability or failure to take the essential procedural step in time, but also any other considerations that might impel a court of justice to excuse a procedural lapse and incline to a hearing on the merits. In this particular case, the existence of two conflicting decisions between the trial tribunal and the first appellate court on whether the dispute before the trial tribunal was a probate or land dispute, alone, is a compelling reason for this matter to be determined by the Court even if there were some procedural lapses which is not the case in the instant application.

The position of the law is long settled and clear that, where a party is shown to have diligently taken steps only to be caught up in web of technicality, a sufficient cause is generally taken to have existed for the delay. See, for instance, **Felix Tumbo Kissima v. Tanzania Telecommunication Co. Ltd and Another** [1997] T.L.R. 57, **Michael Lessani Kweka** (supra) and **Fortunatus Masha William Shija and Another** [1997] T.L.R. 154. In this particular matter, the applicant

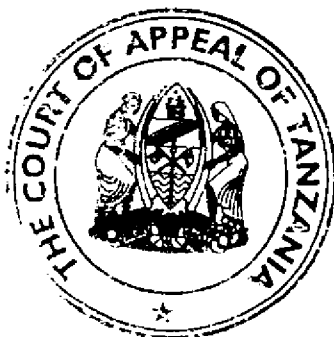
diligently took steps but only to be caught up in a web of technicality. This reason and coupled with the fact that there are triable issues as indicated by the High Court Judge who granted leave to appeal, are sufficient reasons compelling me to grant the prayer sought.

For reasons discussed above, time within which to lodge an appeal out of time is accordingly extended. The same to be filed within twenty-one (21) days of delivery of this ruling. Costs to follow event.

**DATED at DAR ES SALAAM this 24<sup>th</sup> day of February, 2023.**

P. F. KIHWELO  
**JUSTICE OF APPEAL**

The ruling delivered this 27<sup>th</sup> day of February, 2023 in the presence of Mr. Mluge Karoli Fabian, learned counsel for the Applicant and the Respondent in person, is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR  
COURT OF APPEAL**