

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT ARUSHA**  
**CIVIL APPLICATION NO. 370/02 OF 2023**

**ABDALLAH SAID ATHUMANI ..... APPLICANT**

**VERSUS**

**SOMO SAID ..... RESPONDENT**

**(Application for extension of time to file the Notice of Appeal out of time  
from the judgment and orders of the High Court of Tanzania at Arusha)**

**(Maige, J.)**

**Dated the 27<sup>th</sup> day of November, 2018  
in**

**Miscellaneous Application No. 37 of 2018**

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**RULING**

20<sup>th</sup> & 23<sup>rd</sup> February, 2024

**MGEYEKWA, J.A.**

The applicant, ABDALLAH SAID ATHUMANI, has lodged this application seeking an order for extension of time within which to lodge a notice of appeal against the decision of the High Court of Tanzania at Arusha dated 27<sup>th</sup> November 2018 in respect to Misc. Application No. 37 of 2018. The High Court declined to grant the applicant's application, thus, such that he had to lodge the instant application as a second bite before the Court. The application is brought by way of notice of motion lodged under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the

Rules). The application is supported by an affidavit affirmed by Mr. Abdallah Said Athumani, the applicant. The application is contested by the respondent whose advocate filed affidavit in reply sworn by John Melchior Shirima learned counsel for the respondent challenging the merit of the instant application.

To appreciate the nature and essence of the application the relevant background facts, albeit in brief, as discerned from the affidavits filed for and against the application together with the documents attached thereto, are as follows: the matter originated from the District Land and Housing Tribunal for Arusha (DLHT) decision in Land Application No. 75 of 2011 dated 16<sup>th</sup> December, 2015. The dispute was over a piece landed property. After hearing the parties, the DLHT dismissed the suit. Dissatisfied, the applicant unsuccessfully appealed to the High Court of Tanzania at Arusha (Maghimbi, J.) vide Land Appeal No. 26 of 2016, which was delivered on 28<sup>th</sup> July 2017.

Aggrieved, the applicant requested copies of proceedings, judgment, and proceedings. Before the lapse of time to file the notice of appeal, the applicant fell sick and attended medical treatments from 23<sup>rd</sup> August 2017 to 29<sup>th</sup> August 2017. Subsequently, on 4<sup>th</sup> October, 2017, the applicant applied for extension of time before the High Court ( Maghimbi, J.) *vide* Application No. 155 of 2017. However, the

application was struck for being incompetent. On 5<sup>th</sup> April, 2018, he lodged Misc. Land Application No. 37 of 2018 before the High Court which was dismissed on 27<sup>th</sup> November, 2018.

Still desirous to pursue the intended appeal, the applicant rebooted its quest by approaching this Court vide Civil Application No. 370/02 of 2023, as a second bite, seeking extension of time to file notice of appeal.

At the hearing of this application, Mr. Joseph Moses Oleshangay, learned counsel argued the application on behalf of the applicant referring to the supporting affidavit. Mr. John Shirima, learned advocate for the respondent contested the application on the ground that the applicant has not accounted for each day of delay.

Submitting in support of the prayer for the extension of time, Mr. Oleshangay adopted the notice of motion, affidavit as well as the written submissions to form part of his oral submissions. He submitted that it is the court's discretion to either grant or refuse extension of time and such discretion ought to be exercised judiciously. To bolster his submission, he referred me to the cases of **Mohamudi Ally v. Oliver Daniel (Administrator of the Estate of the late David Manywili) & 3 Others v Mwanahamisi Ally Nongwa**, Misc. Civil Application No.

96 of 2021 **Lyamuya Construction Company Ltd v. The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

Expounding, Mr. Oleshangay stated that, the applicant recovered and lodged Application No. 155 of 2017 on 5<sup>th</sup> October, 2017, before Maghimbi, J. He added that since the applicant was a layperson, he filed the same under the Law of Limitation Act. As a result, on 20<sup>th</sup> March, 2018, Application No. 155 of 2017 was struck out for being incompetent. He went on to submit that on 5<sup>th</sup> April, 2018, the applicant lodged a first bite application before the High Court, the High Court refused to grant his application on the ground that he did not account for each day of delay. Mr. Oleshangay tried to convince the Court that the applicant was diligent in making close follow-ups in court.

In conclusion, the learned counsel for the applicant urged the Court to grant the applicant's application so that they can lodge a notice of appeal out of time.

On his part, Mr. Shirima from the outset, resisted the application. He adopted his affidavit in reply. He submitted that the decision sought was improper. He attacked the averments that the applicant accounted for each day of delay. He submitted further that according to the

applicant's counsel's affidavit, the applicant fell sick and attended hospital on 23<sup>rd</sup> August, 2017 to 29<sup>th</sup> August, 2017. He spiritedly argued that the applicant did not exhibit his claims to prove if he requested to be supplied with a copy of proceedings of the High Court. He argued that, the applicant's averment is an afterthought because there is no legal requirement for the applicant to attach a copy of the impugned judgment and decree.

The learned counsel for the respondent contended further that, it is trite law that for an application for extension of time to be granted, the applicant must account for each day of delay. To reinforce his submission, he drew my attention to the case of **Finca (T) Limited and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 [2019] TZCA 561 (15 May 2019). In the circumstances, Mr. Shirima implored me to dismiss the application with costs.

Rejoining, Mr. Oleshangay began by a reiteration of what he had submitted in chief and maintained that sufficient cause is evident. He was sure that the applicants acted diligently. He stressed that the Misc. Application No. 155 of 2017 before Hon Maghimbi, J. was prosecuted in 2016 while the citation of the said application was erroneously written as Civil Application No. 155 of 2016 instead of Misc. Land Application No. 155 of 2017. In his view, he found it is a good ground for extension of

time. Finally, he urged me to grant the applicant's application without costs.

I have carefully scrutinized the record of the application and the contending submissions of the counsel for the parties. The issues for consideration are; **one**, whether the applicant has demonstrated good cause to warrant the grant of extension of time to file a notice of appeal out of time. **Two**, whether the applicant has accounted for each day of delay. Rule 10 of the Rules under which this application is brought requires good cause to be shown for the Court to grant extension of time. For ease of reference, it reads:

*"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended." It is noteworthy that there is no universal definition of the term "good cause."*

In the light of the above rule, good cause means satisfactory reasons of delay or other important factors that need the attention of

the Court, once advanced, may be considered to extend time within which a certain act may be done.

Equally important is that an application of this nature must be filed as soon as an applicant becomes aware of the need to do so and he is obliged to account for the delay for every day within the prescribed period. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court, in the case of **Bushfire Hassan v. Latina Lucia Masanya**, Civil Application No.3 of 2007 (unreported), it held that:-

*"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."*

See also **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported) and **FINCA (T) Ltd & Another v Boniface Mwalukisa**, (Civil Application No.589 of 2018) [2019] TZCA 93; (15 May 2019) TanZLII.

Let me now turn to the affidavit and follow the sequence chronologically: According to paragraph 2 of the applicant's affidavit, the impugned judgment now sought to be challenged was delivered on 28<sup>th</sup> July, 2017. As per rule 83 (2) of the Tanzania Court of Appeal Rules, the

applicant was required to file the notice of appeal within thirty (30) days from the date of delivery of the impugned ruling. It ought to have been filed latest on 27<sup>th</sup> August, 2017. In the present case, the applicant's advocate has deponed in paragraph 4 of his affidavit that, before the lapse of filing the notice of appeal, the applicant got sick and attended medical treatment from 23<sup>rd</sup> August, 2017 to 29<sup>th</sup> August, 2017, hence he found himself out of time to file the notice of appeal.

According to the applicant's affidavit particularly paragraph 10 show that the applicant filed Application No. 155 of 2017 at the High Court, but, the same was dismissed. In his oral submission, Mr. Oleshangay spiritedly argued on the issue of misinterpretation of the citation of Misc. Land Application No. 155 of 2017 and believed it was a good ground for extension of time. I am not at one with him because at this juncture the applicant's advocate was supposed to account for the days of delay and raise an illegality to move me to grant his application. The alleged legal point of law is not apparently on the face of record it requires long drawn process, therefore, the termed illegality cannot move me to grant his application. In addition, according to the applicant's affidavit specifically paragraph 13 reveal that, he filed the first application for extension of time ( Misc. Application No. 37 of 2018) before the High Court (Maige, J as he then was) on 4<sup>th</sup> April, 2018. The

applicant was supposed to account for each day of delay from 29<sup>th</sup> August, 2017 when he was discharged from the hospital to 4<sup>th</sup> April, 2018, when he preferred Misc. Land Application No. 37 of 2018 before the High Court.

This, in my reckoning, makes a total of approximately 8 months unaccounted for, and I cannot ignore it. The applicant's diligence is therefore called in question. It is settled law that a party applying for extension of time has to account for every day of delay. This point was underscored in the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (unreported) and the Court took a similar position in **Bariki Israel v. R**, Criminal Application No. 4 of 2011 (unreported), where the Court held: -

*"...in an application for extension of time, the applicant has to account for every day of the delay..."*

See also **FINCA (T) Limited (supra), Joseph Paul Kyanka Njau & Another v. Emmanuel Paul Kyanka Njau & Another**, Civil Application No. 7/05 of 2016 (unreported) and **Sebastian Ndaula v Grace Rwamafa**, Civil Application No.4 of 2014, (unreported) where it was stated that, delay of even a single day needs to be explained out.

Guided by the above cited authorities, I find the applicant has not accounted for the whole period of delay. There is nothing in the applicant's affidavit explaining what transpired between 29<sup>th</sup> August, 2017 when he was discharged from the hospital to 4<sup>th</sup> April, 2018, a day before filing this application.

Having so stated, I find and hold that, the applicant has failed to account for the delay and establish the alleged illegality as a good cause for extending time for him to file the intended revision. As a result, I hereby dismiss this application with costs.

Order accordingly.

**DATED** at **ARUSHA** this 23<sup>rd</sup> day of February, 2024.

A. Z. MGEYEKWA  
**JUSTICE OF APPEAL**

The Ruling delivered this 23<sup>rd</sup> day of February, 2024 in the presence of Mr. Joseph Moses Oleshangay, learned counsel for the applicant and Mr. Henry Simon Katunzi holding brief for Mr. John Shirima, learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**