

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC- LAND APPLICATION NO. 118 OF 2017

MOHAMED RAJUU HASSAN.....APPLICANT

VERSUS

ALMAHRI MOHSEN CHALEB (Administrator of the estate of
the late Salim Ally Al Saad.....**1ST RESPONDENT**

FATMA SALIM ALLY SAAD (Administrator of the estate of the
late Salim Ally Al Saad.....**2ND RESPONDENT**

MATHIAS ERASTO MANGA.....3RD RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The application was brought under the provisions of Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002. The applicant is praying that this Court be pleased to grant to him an order for extension of time within which to file an application for leave to appeal to the court of Appeal in respect of judgment and decree of this court in Land Case No. 11/2015 19th, June, 2017. The applicant also prayed for an order for costs and any other relief this court may deem fit and just to grant. The application was supported by an affidavit of the applicant's advocate Mr. Salim Mushi dated 22/08/2017. The respondents were represented by Mr. Valentine Nyalu. On the onset of his submissions, Mr. Mushi prayed that the affidavit in support of this application be adopted to form part of his submissions.

I have gone through the records of this application and have considered the parties' submission for and against this application. The decree of this court was issued on the 31/07/2018. Prior to that, the applicant had filed a Misc. Land Application No. 79/2017 being an application for leave to appeal to the court of appeal and the court *suo moto* struck out the application for its failure to attach a copy of the decree subject of the appeal. The application was dismissed on the 21/08/2017 and this application was filed on 24/08/2017. It is evident that the applicant has made efforts to pursue his right from the prompt actions taken by him.

For the aforesaid reason, this application is hereby allowed. Time is hereby extended for the applicant to file his intended appeal which shall be filed in this court within twenty one (21) days from the date of this ruling. I make no order as to costs.

Dated at Arusha this 29th day of August, 2018

.....
S. M. MAGHIMBI
JUDGE

He supported his submission by citing the case of **M/s Tanzania Wildlife Corporation Vs. Frida Mwijage, Civil Application No. 2 of 2014**, (unreported) whereby the Court of Appeal held:

"In our case the reason for delay to file is that the applicants are yet to be supplied with the documents from the High Court to enable them to file revisional proceedings. No doubt the reasons

advanced is good cause to extend time. The application is granted as prayed".

He then submitted that the applicant in this case was also prevented from filing the appeal in time because he was not supplied with appeal document in time. At the time when he supplied with the necessary document to appeal there had already lapsed. He prayed that this application is allowed.

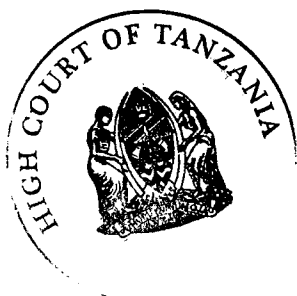
In reply, the respondent submitted that the copies of the proceedings were ready for collection on the 01/02/2017 as evidenced in the copy of judgment and decree furnished to the respondent hence the documents were ready for a long time and the applicant unreasonably delayed to collect them. She hence argued that the applicant has no genuine reasons as to why he failed to file the memorandum of appeal on time. She prayed that the application is dismissed.

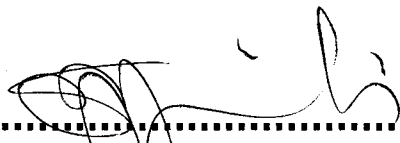
On my part I have gone through the records of this application. Indeed as argued by the respondent, the judgment of the trial court was certified on the 01/02/2017. However Order XXXIX Rule 1 of the Civil Procedure Code, Cap. 33 R.E 2002 provides:

*1.-(1) Every appeal shall be preferred in the form of memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf. The **memorandum shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded.*

From the above provision, the memorandum of appeal is required to be accompanied by a copy of the decree that is a subject of appeal. As per the records, the decree of the trial court was issued on the 24/03/2017 and it was on the same date that the applicant filed this application. Evidently, the applicant did not sleep on his right and has shown sufficient reasons to warrant this court to use its discretion to grant the orders sought. That said, this application is hereby granted. Time is extended for the applicant to file his intended appeal which shall be filed in this court within 21 days from the date of this ruling. I make no order as to costs.

Dated at Arusha this 30th day of August, 2018




.....
S. M. MAGHIMBI
JUDGE