

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

**MISCELLANEOUS LAND APPLICATION NO. 55 OF 2017**

*(C/F Land Appeal No. 37 of 2016 Originating from Application No.105 of 2010)*

*BETWEEN*

**BENEDICTA SABASI.....APPLICANT**

**AND**

**GLORY MUSHI..... RESPONDENT**

**RULING**

**19<sup>th</sup> October, 2018**

**Mwenempazi, J.**

This is an application for an order for extension of time to apply for leave to appeal to the court of Appeal out of time. The applicant has brought the application Under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 together with the application for an order to enlarge time to apply for leave; The applicant also prays for the court to order that cost of the application be born by the respondent.

The application is supported by an affidavit which was sworn by Benedicta Sabasi. In it she has averred that she was the 2<sup>nd</sup> Respondent in the Land Appeal No. 37 of 2016 before this court, whose judgment was delivered on the 30<sup>th</sup> March, 2017 in favour of the Respondent.

Within twelve days the applicant lodged a request to be supplied with copies of Judgment and proceedings to enable her take necessary steps to appeal to the court of appeal. Before she could file an appeal her father passed away at Meatu. So she had to travel for funeral services. While there, she had an accident while riding on (bodaboda vide, the fact which made her stay longer until 16<sup>th</sup> May, 2017. Her father passed away on the 14<sup>th</sup> April, 2017.

The applicant therefore avers that it was not laxity which made her delay, but natural events which, are beyond her control. Since she is aggrieved by the decision of the High Court, she therefore prays this court enlarges time for her to file leave to appeal.

The applicant is being represented by Asubuhi Yoyo Advocate. The respondent has not contested this application; in fact even entering appearance in court. The applicant has filed a returned summons with an affidavit whereby the court process server one, Zakaria Meleiya has sworn that, the respondent received a summons but refused to sign. It was at Mrombo area on the 21<sup>st</sup> August, 2018. Hence the applicant is proceeding ex parte.

On the 24<sup>th</sup> September, 2018 the applicant was granted leave to file a written submission on 2<sup>nd</sup> October 2018 to support her application. The order was complied. In the written submission, the applicant has prayed her affidavit be adopted to be part of this submission.

In the written submission the learned counsel has submitted to respond to the question as to whether the application at hand has met the there

should required by law. He has answered in the affirmative on reasons that first, the applicant has provided sufficient reason; sufficient material and explanations to warrant the court to exercise its discretion and grant an extension of time to file leave to appeal.

Secondly, the court is bound to look at the pleadings and contents of the affidavit and not to be Sympathetic to arguments raised from the bar that does not feature anyway in the pleadings.

Thirdly, the court is at liberty to consider many other specific factors depending on specific circumstances of each case and may decline to grant an application when the application before it does not come with clear hands.

Fourthly, the applicant must account every single day of delay by giving sufficient explanations and sufficient material worth of being relied upon to act judiciously.

The counsel for the applicant then went on to cite a number of authorities to reinforce his arguments for an extension of time to file an application for leave to appeal to the court of appeal.

As a matter of principle, an extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. Refer **Mumello V Bank of Tanzania**[2006] 1 EA 227 (CAT). As to what amounts to sufficient cause is not yet decided but it was held in **Tanga Cement Company Ltd. V Jumanne D. Masanga and**

**Amos A. Mwalwanda** Civil Application No. 6 of 2001, Court of Appeal of Tanzania.

*".... A number of factors has to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."*

In the case above, Mumello V. Bank of Tanzania the court held that:-

*"applying for copies of proceedings and judgment within such a short time from the date of judgment, and later making a follow up by way of reminder, and finally lodging the application immediately after being supplied with the same, depicts diligence on the part of respondent."*

In the application at hand the applicant in her affidavit, at paragraph 3 averred that she applied for the judgment and proceedings within a few days, namely on 12/4/2017. Then two days later her father passed away at MEATU. She had to travel for funeral, then while there, she got an accident and a period of stay was lengthened until when she came back on 16/May, 2017. The explanations given show that what made her delay was beyond her personal control. She was diligent enough to make sure the appeal is filed but for the passing away of her father and the accident that befell her while at Simiyu, time elapsed.

In my view, the applicant has made efforts worthy appreciating that it was not just negligence but she did what was necessary to make sure she was

within time. I am satisfied that a sufficient cause has been shown. Time to file leave to appeal is thus extended for 14 days from the date of this ruling.



  
**T. MWENEMPAZI**

**JUDGE**

**29<sup>TH</sup> OCTOBER, 2018**