

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION. No. 134 OF 2019

RICHARD MLAGALA.....1st APPLICANT
SIFA NANAYARO.....2nd APPLICANT
AIDAN KUNYANJA.....3rd APPLICANT
JULIANA PALANGYO.....4th APPLICANT
JOHN SANDE.....5th APPLICANT
EMIL LAGATE.....6th APPLICANT
ROGASIAN LASWAI.....7th APPLICANT
ERNEST MAEMBE.....8th APPLICANT
LUPAKISYO MWAN'GONDA.....9th APPLICANT
SAMWEL NDIRANGE.....10th APPLICANT

Versus

AIKAELI MINJA.....1st RESPONDENT
HAMISI MSUYA.....2nd RESPONDENT
RUMAYA A.....3rd RESPONDENT
MAGOTI A.4th RESPONDENT

RULING

23/8/ - 01/10/2019

J. A. DE-MELLO, J;

This Court has been moved under **Section 11 (1)** of the **Appellate Jurisdiction Act, Cap. 141 R.E 2002**, and, any other enabling provisions of the law, for the following orders:-

- 1. That, this Honourable Court be pleased to grant the Applicants Extension of Time within which to file a Notice of Appeal to the Court of Appeal of Tanzania against the whole decision dated the 18th day of February 2011 in the above named appeal and take all other steps incidental to the Notice of Appeal.**
- 2. This Court may be pleased to grant the Applicants extension of time within which to file an application for leave to appeal to the Court of Appeal of Tanzania against the whole decision dated the 18th of day of February, 2011 in the above named appeal.**
- 3. Cost of this application be provided for;**
- 4. Any other relief(s) which the Honourable Court shall deem fit.**

Written submissions were ordered following complaints by the **Counsel Mary Lamwai** registering absence of Respondent notwithstanding service and aware of the same. Both are in compliance as I compose this Ruling.

It is the sworn **Affidavit of Counsel Masumbuko Lamwai** that accompanies this Application, apportioning reasons for the delay following **Counsel Ntonge's state of health** which lead to **Struck Out** of the Appeal on the **5th day of November 2018** amidst **Counsel Lamwai's intervention** to amend defect in the record of Appeal, after taking over from him. It is illness that, basically Counsel relies to fortify the long delay. Cognizant of the discretion that Courts are bestowed with, Counsel cited the cases of **Omary Shabani Nyambu vs. Dodoma Water and Sewerage Authority, Civil Application No. 146 of 2016, Mathias Charles Kaselele vs. The Registered Trustees of the Archdiocese of Mwanza Roman Catholic Church Civil Application No. 6 of 2016** and that of **Sebastian Ndaula vs. Grace Rwamafa Civil Application No. 4 of 2014** for, discretion, good cause and, accounting for each day of delay respectively. The grounds are sufficient, Counsel concluded as he prayed for grant of the Application with costs in due course.

Fiercely opposing the Application, **Counsel Luguwa** making references to the cases of **NBC Ltd. vs. SAO Ligo Holding Ltd & Another, Civil Application No. 267 of 2015, Jumanne Hassan Billing vs. Republic, Isignia Ltd. vs. Commissioner General & Tanzania Revenue**

Authority, challenging the reasons advanced not to be sufficient. The illness and defective record of Appeal allegedly prepared **by Ntonges junior officer** are lame and speculative he asserts. In absence of Affidavits from **Ntonge's office**, all this remains bare allegation for the Court to condone. The Application is devoid of merit and justifies a dismissal with costs.

While Courts have wide discretionary powers in such applications, it is a trite law that an application of such nature, for extension of time demands good cause and sufficient enough to exercise and grant. The Extension sought is quite apparent, originates from the Judgment of this Court that was delivered on the 31/08/2017, while this Application was lodged on the 17/05/2018. In the case of **Shanti vs. Shindocha & Others [1973] E.A 207** where the Court of Appeal stated;

"The position of the Applicant for extension of time is entirely different from that of an Applicant for leave to Appeal. He is concerned with showing sufficient reasons why he should be given more time and the most persuasive reason he can show is that the delay has been caused or contributed by dilatory conduct

on his part. But there may be some other reasons and these all are matters of degree”.

Others of such reasons maybe like **illegality of the decision** as was expounded in the case of **Principal Secretary Ministry of Defence & National Service vs. Devram Valambia, [1992] TLR 185.**

It is hence my sincere view that, there is justifiable reason(s) advanced by the Applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to lodge both the **Notice of Appeal** and **Leave to Appeal to Court of Appeal Out of time.**

Costs is granted and in due course.

It is so ordered.


J. A. DE-MELLO
JUDGE
01/10/2019