IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND CASE APPLICATION NO. 99 OF 2017

(Arising from the Land Appeal No. 50/2016 in the High Court of Tanzania at Dodoma and from the District Land and Housing Tribunal of Kondoa in the Land Appeal No. 2/2015, Original Land Case No. 4/2015 of Dalai Ward Tribunal)

JUMA KIVINA.....APPLICANT

VERSUS

ABDI KIKWAZI.....RESPONDENT

RULING

21/1/2019 & 25/1/2019

KITUSI, J.

By this application under section 11(1) of the Appellate Jurisdiction Act, CAP 141, the applicant Juma Kivina seeks for the court's indulgence so that it may extend the time within which he may file a Notice of Appeal to challenge this said court's decision to the Court of Appeal. An affidavit taken by Mr. Samwel Mcharo, learned advocate, supports the application on, principally, one ground.

Mr Mcharo is the one who prosecuted the application by a brief submission. For the respondent a counter affidavit of Mr Godwin Beatus Ngongi was filed to resist the application. Mr. Ngongi is the learned advocate who stood for the respondent at the hearing of this application.

The brief background of the matter is that the land dispute originated from the Ward Tribunal of Dalai within Kondoa District and was finalized by this court (My Sister Mansoor,J) on 15 May 2017, sitting on appeal from the decision of the District Land and Housing Tribunal (DLHT). The applicant felt aggrieved and decided that an application for review would address the grievances. However, according to both the affidavit and Mr Mcharo's submissions, the application for review was rejected or that it could not be admitted on the ground that the court could not sit in review of its decision made in its appellate powers. That is when it occurred to the applicant that an appeal was the appropriate avenue but the time within which to file Notice to do so had elapsed. The main reason for the delay is, therefore, the pursuit for a review which never got admitted.

Mr Ngongi was opposed to the rationale for the delay. He submitted that the choice to go for review which turned out to be a wrong choice was either negligence on the part of counsel or ignorance of law, both of which do not constitute good cause. The learned counsel cited the case of **Bertha Israel Behile V. Zakaria Israel Kidava** Misc. Civil Application No. 12 of 2016, (HC) at Iringa, (unreported) by my sister Shangali, J (as she then was).

Mr Mcharo did not have much to submit on in terms of countering the submission as to ignorance of law being not a justification. He distinguished the case at hand with that of **Bertha Israel** (supra) then sort of maintained a belief that the application for review was still maintainable and he would have won the day had he gone beyond the admission desk.

In resolving the issue before me and it being a matter of discretion, I take the view that although in **Bertha Israel** this court concluded that wrong legal advice or ignorance of law do not constitute sufficient reasons, the general rule is that what amounts to sufficient reason is a matter that depends on the peculiar circumstances of each case. There is quite a score of decisions to that effect including **Regional Manager, TANROADS Kagera V. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007, CAT (unreported) and; **Tanga Cement Company Limited V. Jumanne D. Massanga and Amos Mwalwanda**, Civil Application No. 6 of 2001 CAT (unreported).

In this case I have to consider and decide whether the decision by the applicant's advocate to go for a review instead of appeal that consequently led to the delay can amount to a good cause. If the application was being considered under the Law of Limitation Act, CAP 89, section 21 (2) thereof would have come to the applicant's rescue. Under that provision the time during which the applicant is prosecuting the matter for the same relief and in good faith is excluded in computing the period of

limitation. But this application falls under the Appellate Jurisdiction Act, CAP 141.

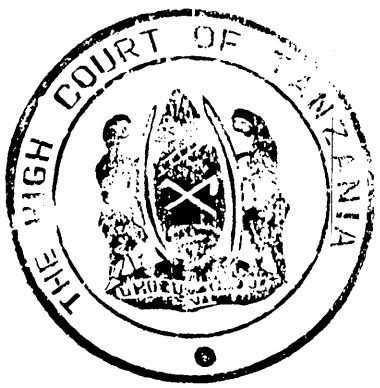
As a general rule, negligence, wrong advice or ignorance of law by a counsel do not constitute good cause, and to that extent I go along with Mr Ngongi for the respondent. However there is, as it were, an exception to every rule. This position was made clear by the Court of Appeal in **Felix Tumbo Kisima V. TTC Limited** and another, Civil Application NO. 1 of 1997 CAT (unreported) cited with approval in **Aknonaay Sidawe V. Lohay Baran**, Civil Application NO. 25/02 of 2016 CAT (unreported). In Felix Tumbo (supra) their Lordships held;

> *"But there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate..."*

I have given consideration of the circumstances surrounding this case specifically the fact that the intended application for review did not even get the attention of a judge and yet the applicant's advocate feels that it should have been placed before a judge. Also considering that a similar situation under the Law of Limitation Act would not have caused this dilemma, it is my conclusion that this is a fit case to consider as an exception.

Accordingly I am satisfied that the applicant has accounted for the delay and was diligent. Thus the application is granted, but under the

circumstances, each party to bear own costs. The intended Notice to be filed within fourteen (14) days of this order.



I.P. KITUSI

JUDGE

25/01/2019