

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA

MISCELLANEOUS LAND CASE APPLICATION No. 52 OF 2019
(Arising out of Consolidated Land Appeal No.14 & 17/2017 of the
High Court of Tanzania at Tabora and the Original Land Application
No. 5/2008 of the District Land and Housing Tribunal for Tabora)

FURAHA DENIS PASHUAPPLICANT

VERSUS

JAMES BERNADO NTAMBALARESPONDENT

RULING

Date of Last Order: 20/05/2020

Date of Delivery: 10/07/2020

AMOUR S. KHAMIS, J.:

This matter originated in the District Land and Housing Tribunal for Tabora where it was instituted in the year 2008.

In Consolidated Land Appeals No.14 and 17 of 2010 involving Denis Pashu as the appellant and James Bernardo Ntambala as the respondent, this Court (Rumanyika, J) declared James Bernado

Ntambala as the lawful owner of the disputed house located at Mabatini area, Urambo South Village, Urambo District, Tabora Region.

Aggrieved by that decision, Furaha Denis Pashu lodged a notice of appeal to the Court of Appeal and applied for copies of proceedings for preparation of records of appeal.

Upon receipt of requisite documents, on 15/10/2018, the applicant filed an appeal in the Court of Appeal.

The applicant contended in this application that the documents supplied by the Deputy Registrar and upon which the appeal was instituted in the Court of Appeal, were improper and did not address the needs of the appeal.

Subsequently, he filed Civil Application No. 3 of 2017 (renamed as Civil Application No. 182/11 of 2017) on a prayer for extension of time to appeal to the Court of Appeal.

On 19/2/2018, the Court of Appeal (Mugasha, J.A) marked the application (Civil Application No. 182/11 of 2017) withdrawn and directed that:

“ . . . the issuing of the certificate of delay to the applicant by the District Registrar should be preceded by the supply of proper record of proceedings of the District Land and Housing Tribunal and the High Court . . . ”

On 24/11/2017 James Bernado Ntambala moved the Court of Appeal vide Civil Application No. 178/11 of 2016 to strike out the applicant's notice of appeal.

On 5/1/2019, the Court of Appeal acting on the respondent's application, struck out the notice of appeal lodged by the applicant on 10/5/2013.

In the present application, Furaha Denis Pashu moved this Court for extension of time for giving notice of intention to appeal to the Court of Appeal against the Judgment of this Court (Rumanyika, J) dated 9/5/2013.

The application was made by Chamber Summons under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2002 and supported by an affidavit of Musa Kassim, learned advocate.

In paragraphs 8 and 9 of the affidavit, Mr. Kassim disclosed reasons for delay, thus:

"8. That the Deputy Registrar's supply to the applicant of improper Court file documents: failure to supply proper Court and supply of the proper Court document later upon being ordered by the Court of Appeal in Civil Application No. 182/11 of 2017 are the factors contributed to the striking out of the said notice of appeal which was beyond control of the applicant but the Deputy Registrar of this Court.

9. That while notice of appeal was struck out on 5/11/2019, on Friday, we commenced preparing this

application and finalized it on 9/12/2019 for filing to this Court.”

James Bernado Ntambala filed a counter affidavit alleging that there was no proof to the effect that the Deputy Registrar had supplied improper documents to the applicant or that the applicant had made any request for proper Court documents.

Further, the respondent averred that the application was misplaced as there was a pending appeal in the Court of Appeal.

James Ntambala asserted that the applicant’s notice of appeal was struck out on account of his negligence to take reasonable steps to present the appeal and failure to take actions upon being served with the respondent’s application for striking out the notice of appeal.

It was further averred by the respondent that the applicant disclosed no sufficient grounds for extension of time and failed to account for each day of delay from when the notice of appeal was struck out to the time of filing this application.

The application was canvassed by way of written submissions and both parties complied to the time line set by the Court.

The applicant had able services of Mr. Musa Kassim, learned advocate, while Mr. Kelvin Kayaga, learned advocate, competently acted for the respondent.

I have read and examined the counsel rival submissions. The issue for determination is whether the application disclosed a sufficient cause for extension of time.

Section 11 (1) of the **APPELLATE JURISDICTION ACT, CAP. 141, R.E. 2002**, reads:

“11 (1) subject to Subsection (2), the High Court or, where on appeal lies from a subordinate Court exercising extended powers, the subordinate Court concerned, may extend the time for giving notice of intention to appeal from a Judgment of the High Court or of the subordinate Court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.”

Mr. Musa Kassim submitted that the applicant had acted promptly in filing the application and did so in good faith throughout the proceedings.

In support of his contentions, the learned advocate relied on **ZUBERI MUSSA V SHINYANGA TOWN COUNCIL, TBR CIVIL APPLICATION NO. 3 OF 2007** and **EZRON MAGESA MARYOGO V KASIM MOHAMED SAID AND ANOTHER, CIVIL APPLICATION NO. 148/17 OF 2017**, (unreported decisions by the Court of Appeal).

In a reply, Mr. Kelvin Kayaga, learned advocate for the respondent, contended that soon after lodging the notice of appeal, the applicant neglected to take other vital steps for instituting an appeal.

Mr. Kayaga submitted that the applicant acted negligently and failed to provide reasonable grounds for extension of time.

The law on extension of time is not a virgin territory. In **BLUE LINE ENTERPRISES LTD V EAST AFRICAN DEVELOPMENT BANK, MISC. CIVIL CAUSE NO. 135/1995** (unreported), Katiti, J (as he then was) held that:

“ . . . extension of time must be for sufficient cause and that extension of time cannot be claimed as of right. That the power to grant this concession is discretionally, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by the Court ”

In **ALLISON SILA V THA, CIVIL REFERENCE NO. 14 OF 1998** (unreported), the Court of Appeal observed that:

“ . . . It is settled that where the time limited by the rules has expired, sufficient reason should be shown for the delay . . . ”

In the present case, it is not disputed that the impugned judgment of this Court was delivered on 9/5/2013 and the applicant issued a notice of appeal on 10/5/2013.

It is also acknowledged that the applicant’s notice of appeal was struck out by the Court of Appeal on 4/12/2019.

The applicant advanced that his appeal in the Court of Appeal was slothful on account of the Deputy Registrar's failure to supply competent records.

That issue was addressed by the Court of Appeal in Civil Application No. 178/11 of 2016 which involved same parties, at page 9 of the typed ruling, thus:

“For the avoidance doubt, we are alive to the reasons advanced by Mr. Kassim from the bar on the steps allegedly taken after the affidavit in reply was filed. We haste the remark that those statements from the bar are legally unacceptable”

The same issue cropped up in Civil Application No. 182/11 of 2017 involving same parties, wherein, Madam Justice Mugasha, J.A, remarked that:

“Given the circumstances, since the applicant applied to be supplied with the records of proceedings of the High Court, the issuing of the certificate of delay to the applicant by the District Registrar should be preceded by the supply of proper record of proceedings of the District Land and Housing Tribunal, and the High Court”

I have examined the documents attached to the affidavit of Mr. Musa Kassim which show several steps employed by the applicant to pursue an appeal.

A letter by RMK Advocates Chambers dated 9th Jan 2017 addressed to the Deputy Registrar of this Court forms part of annexure FD – 3 to the affidavit. The letter partly reads:

“Immediately after your letter being brought to our attention me made a physical inspection with you of the said intended records to be supplied to us but very unfortunately Exhibits P. 1 (document showing the respondent is the lawful owner of the premises in dispute (see page 9 of the trial tribunal typed proceedings) and Exhibit P. 2 (demand letter by M.K. Mtaki (Advocate) also on page 9 of the typed proceedings of the trial tribunal were not included in those documents intended to be supplied to us.”

The reproduced letter was responded to by the Deputy Registrar of this Court through a letter referenced J/HCT/C.90/VOL.VII/85 dated 25th Jan 2017, thus:

“Refer to your letter with refer no. RMK/MISC/17/01 dated 9th January, 2017 in which you request to be supplied with necessary documents which are exhibit P 1 and P. 2 tendered in the District Land and Housing Tribunal Tabora in the above mentioned case.

Kindly be informed that the requested exhibits are ready for collection and you are required to pay Tshs. 500 for each, being the Court fees for said documents.”

Vide Exchequer Receipt No. 13590655 of 25/1/2017, RMK Advocates paid Tshs.1000/= and the two missing exhibits were supplied.

Through letters dated 30/01/2017 and 10/02/2017 (annextures FD 4) to the affidavit of Musa Kassim, the applicant's counsel requested for a certificate of delay from the Deputy Registrar.

In a letter dated 13/02/2017 bearing reference number LAND APPEAL 47/2016, the Deputy Registrar notified RMK Advocates Chambers that the certificate of delay was issued on 1/02/2017.

Having regard to a series of these correspondents and other documents on record, it is clear that the applicant did not seat idly but employed reasonable steps to pursue an appeal.

Mr. Kelvin Kayaga for the respondent asserted that the applicant delayed for 30 days to file the present application and failed to account for the set back.

Upon examination of the relevant documents, I noticed that the learned counsel for the respondent did not sufficiently address himself on the allegation.

The Court of Appeal's ruling in Civil Application No. 178/11 of 2016 which struck out the applicant's notice of appeal was delivered on 5/12/2019.

The present application was lodged in Court on 10/12/2019. The five days difference between the date of delivery of the ruling and

date of filing the application was well explained in Paragraph 9 of Musa Kassim's affidavit, thus:

"9. That while notice of appeal was strike (sic) out on 5/11/2019 on Friday 6/11/2019, we commenced preparing this application and finalized it on 9/12/2019 for filing to this Court."

It is evident that in Paragraph 9 of the affidavit, the deponent (Musa Kassim) wrongly pointed out a date for delivery of the Court of Appeal decision as 5/11/2019 instead of 5/12/2019.

In my view, the error is not fatal and is curable in view of the principle of complementarity restated by the Court of Appeal in **SAMWELI SICHONE V BULEBE HAMISI, CIVIL APPLICATION NO. 8/2015** (CAT at Mbeya – unreported), thus;

". . . In the matter at hand, since the impugned ruling by Karua, J dated 13/11/2013 is annexed to the affidavit, in terms of the stated principle of complementarity, the correct date and name of the Judge can be gathered in the ruling which is annexed to the applicant's affidavit which renders the notice of motion competent."

For the forestated reasons, I am satisfied that a sufficient cause has been shown for an extension of time and the application is thus granted.

Let the applicant issue a notice of appeal against the impugned Judgment of this Court dated 9/5/2013 within fifteen (15) days from the date of delivery of this ruling.

It is so ordered.

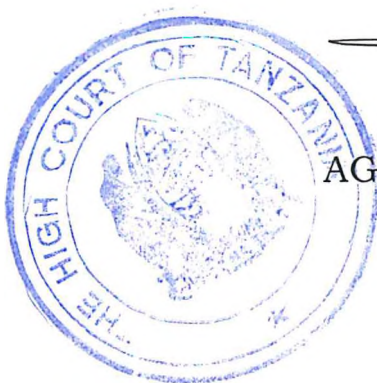


A handwritten signature in blue ink, appearing to read "Amour S. Khamis", is written over the seal.

AMOUR S. KHAMIS
JUDGE
10/07/2020

ORDER: Ruling delivered through Video conferencing in the presence of applicant's attorney and the respondent today on 10/7/2020.

Right of appeal explained.



A handwritten signature in black ink, appearing to read "E. Nkya", is written over the seal.

E. NKYA
AG. DEPUTY REGISTRAR
10/7/2020