

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 10 OF 2019

*(From Land Appeal No.15 of the High Court of Tanzania at Iringa and
original land application no. 86 of 2015 of District Land and Housing
Tribunal for Iringa at Iringa)*

**MODESTUS DAUDI KANGALawe (Administrator of the Estate
of the Late DAUDI TEMAUNGI KANGALawe APPLICANT**

VERSUS

DOMINICUS UTENGA RESPONDENT

Date of Last Order: 12/12/2019

Date of Ruling: 07/02/2020

RULING

MATOGOLO, J.

This is an application filed by the applicant one Modestus Daudi Kangalawe. The application is for extension of time to file a notice of appeal and to file leave to appeal to the Court of Appeal of Tanzania against the decision of this court delivered on 30th day of September, 2016. The application is by chamber summons made under section under 11(1)

of the Appellate Jurisdiction Act, (Cap. 141 R.E 2002) and any other enabling provisions of the Law. It is supported by an affidavit of the applicant. The applicant prays for the following orders;

- (1) That, this Honourable Court be pleased to extend time within which the applicant to file a notice of appeal to the court of Appeal of Tanzania.*
- (2) That, this Honorable Court be pleased to extend the time within which the applicant to file an application for leave to appeal to the Court of Appeal of Tanzania.*
- (3) Any other orders that this Honorable court may deem fit to grant.*

The parties appeared in person unrepresented. The application was argued by way of written submissions.

The applicant submitted that once he was granted leave by this court to appeal to the Court of Appeal he was waiting for the notification letter from the Deputy Registrar on the way forward but to date the applicant has not been supplied by the said copies for appeal purpose and this is why he is requesting this court to grant extension of time to him to file notice of appeal to the Court of Appeal and to file an application for leave to appeal to the Court of Appeal. The applicant submitted further that by the nature of this application the delay is technical one and not actual delay because the applicant accounted for the delay from when the judgment of this court was delivered on 30th day of September, 2016 to

30th day of April, 2018 vide Misc. Land Application No.61 of 2016 which its ruling was delivered on 30 day of April, 2018 by Hon. Feleshi, Judge. Also the delay from 30th day of April, 2018 to 31st day of August, 2018 was accounted vide Misc. Land Application No.17 of 2018 which its ruling was delivered on 31st day of August 2018 by honorable I.K Banzi, Judge. Furthermore, from 31st day of August 2018 to 13th day of March 2019 the applicant was waiting for the letter from Deputy Registrar on whether the certified copies were ready for collection in order to prepare the record of appeal. The applicant submitted further that the applications are brought promptly upon discovery that there is no notice of appeal filed and no negligence on his part.

With regard to the degree of prejudice to the respondent, the applicant argued that there is no way the respondent will be prejudiced if the applicant's prayers are granted and this will be the only way of making peace and harmony within the clan as far as their rights are determined on merit by the Court of Appeal of Tanzania. To cement his argument the applicant referred this court to the case of ***Samaria Village Council versus Patrick Mwalongo And Others***, Misc. Land Application No.50 of 2015 (unreported) where Sameji, Judge as she then was had this to say at pg.11 and 12;

"I am convinced that no prejudice will be occasioned on part of the respondents from allowing this application in as much as a reasonable opportunity will be provided and

accorded to them to clearly articulate the matter and to rebut the applicant's allegations"

The applicant concluded his submission by citing the decision in the case of ***Mabroma Gold Corporation Ltd Vs. Minister For Energy And Others [1998] TLR 425*** where the Court held that, it is generally inappropriate to deny a party an extension of time where such denial will stifle his case, as the applicants delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, extension should be granted. The applicant therefore prayed for the applications be granted.

In reply, the respondent submitting on the first prayer for extension of time to file Notice of Appeal stated that there is no reasonable ground adduced by the applicant rather than the applicant concentrated more on delay of the copies of judgment and proceedings and without any notice to the registrar on the said as the main reason. The applicant further argued that under Rule 68 of the Court of Appeal Rules there is no such requirement of attaching the said copies to the Notice of Appeal, instead the Rule provides:

"Any person who desires to appeal shall give notice in writing, which shall be lodged in triplicate with the registrar of the High Court at the place where the decision against which it is desired to appeal was given, within thirty days

of the date of that decision, and the notice of appeal shall institute the appeal”.

It is the submission by the respondent that failure by the applicant to lodge notice of appeal within thirty days from the decision of the High court as required by Rule 68 is ignorance of the applicant on the said provisions of law, and this is harmful to him as such his allegations are baseless and hence abuse of the court process.

On the second prayer the respondent argued that the applicant prays for extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania, the reason he has advanced is that he has not been supplied with the copy of judgment and proceedings and he is waiting notification letter from the High Court registry. The respondent further submitted that the issue is whether the applicant had supplied to the registrar his formal and proper address of service through which communication could be conveyed to him from the Registrar. It is a settled law that filing a notice of appeal initiates the appeal process as per Rule 68(1) of the Court of Appeal Rules of 2009, thus the application for leave to appeal to the Court of Appeal of Tanzania plus other records as required by the law shall then be mantled on the proper actions taken by the said applicant .Failure to do so makes it impossible for the Registrar to act upon a non-existing issue.

Lastly the respondent prayed to this court to dismiss this application with costs.

In his rejoinder the applicant reiterated his earlier submission in chief and his prayers in the chamber summons.

Having carefully read the parties submissions as well as courts records, the issue for determination by this court is whether this application has merit for the meaning that whether the applicant has advanced sufficient cause for delay.

It is a general principle that granting of extension of time or not is the discretion of the court. But that discretion must be exercised according to the rules of reason and justice. In the case of ***Mbogo vs. Shah [1968]*** **EA** the defunct Court of Appeal for East Africa held;

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended"

The applicant gave reasons for the delay the first one is ignorance of the procedure for appealing to the Court of Appeal. The applicant submitted that being a layperson he filed an application for leave to appeal to the Court of Appeal before first filing a notice of intention to appeal to the Court of Appeal. It is my considered opinion that the law is clear that ignorance of law is not one of sufficient reasons for extension of time (see

for instance, Criminal application No.4 of 2011 **Bariki Israel versus The Republic**).

To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be apprised of it, for otherwise he or she will have nothing to offer as an excuse for the sloppiness.

The applicant submitted that his delay was caused by sickness that he failed to appeal to Court of Appeal as he was sick from 01.10.2016 to 03.10.2016 as he was admitted at Ifunda Mission Health Centre. Another reason for the delay to file an application for leave to appeal to Court of Appeal is absence of letter from the Registrar to inform the applicant that the typed proceedings, judgment and decree are ready for collection and the last reason for the delay advanced by the applicant is irregularities of both trial court and appellate court decisions.

In a case of ***Lyamuya Construction Company Ltd Versus Board Of Registered Trustees of Young Women Christians Associations*** Civil Application No.2 of 2010 Court of Appeal of Tanzania Massati, JA as he then was gave four guidelines which should be observed by courts in granting extensions of time:

(a) The applicant must account for all period of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take.

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as illegality of the decision sought to be challenged.

It is my opinion that as the applicant was granted leave to appeal on 31st day of August 2018 by Hon. Banzi, Judge, but he failed to appeal for the reason that he was waiting for the copies of judgment and decree , also he said the leave was premature as it was to be applied after the notice of appeal, for that case the reason of sickness in my opinion is not a good cause as the same was already considered before Hon. Feleshi, J. in the previous application for extension of time. The applicant appears not diligent, in that both prayers in this application were granted by this court in previous applications. Application for leave was sought and granted to the applicant on 31st August, 2018. Equally an application for extension of time to file notice of appeal was granted on 30th April, 2018. The reason for delay in that application is sickness of the applicant the same reason raised in the present application. There is no good reason as to why the applicant did not act promptly.


The applicant though he is a layperson but he has a person knowledgeable of the court procedure who prepared for him this legal documents even the said premature granted leave the application documents were prepared by his lawyer the person to blame is his lawyer

and not anyone so the applicant's delay in my view is nothing but negligence on his part which cannot be entertained because he was already granted leave by this court and he has to make sure that he make follow up to the Registrar so that he could be supplied with the said copies. And as we know it is the interest of the general public that there must be an end to litigation. The applicant cannot move this court for certain orders and when granted he sits back and dry without taking further action then come back to the same court with the same application.

The applicant complained that there are irregularities and illegality of trial tribunal proceedings that there was exchange of assessors between the proceedings but having perused the court records it reveals that there is only one day when the case was only mentioned, one assessor who was present on the said mentioned date is not among the assessors on the following hearing dates till determination of the case. In my view, exchange of assessors only on a mention date caused no miscarriage of justice.

It is my opinion that the applicant has not demonstrated sufficient cause for the delay for this Court to grant extension of time. This application is hereby dismissed with costs.

It is so ordered.


F. N. MATOGOLO
JUDGE
07/02/2020



Date: 07/02/2020
Coram: Hon. F. N. Matogolo – Judge
L/A: Blandina Mwenda
Applicant: Absent
Respondent: Present
C/C: Grace

COURT:

Ruling delivered today the 7th February, 2020 in the absence of the applicant but in the presence of the respondent.


F. N. MATOGOLO

JUDGE

07/02/2020

