

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

**MISC. LAND APPLICATION NO. 21 OF 2019**

(C/f Civil Appeal No. 3 of 2017, Court of Appeal of Tanzania at Arusha, Original Land  
Case No. 4 of 2011 High Court of Tanzania at Moshi)

**NAINI CHACHA ..... APPLICANT**

**VERSUS**

**NGASOMI LESHAI NDITIKA .....1<sup>ST</sup> RESPONDENT**

**TARETO LENGAI NDITIKA ..... 2<sup>ND</sup> RESPONDENT**

**ELIAMANI MAX NDITIKA ..... 3<sup>RD</sup> RESPONDENT**

**KIMANI LESHAI NDITIKA ..... 4<sup>TH</sup> RESPONDENT**

*16<sup>th</sup> June, 2020 & 17<sup>th</sup> July, 2020*

**RULING**

**MKAPA, J:**

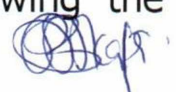
The applicant is seeking for extension of time to lodge Notice of Intention to Appeal and leave to appeal to the Court of Appeal of Tanzania against the decision of this Court (**A.N.M Sumari, J.**) delivered on 17<sup>th</sup> November, 2015 in Land Case No. 4 of 2011. The application is made under **section 11 of the Appellate Jurisdiction Act**, Cap 141, R.E. 2002 (AJA) and is supported by applicant's sworn affidavit. The respondents never disputed the application by filing a counter affidavit despite a number prayers granted by the court.



By consent of the parties the court ordered the application be argued by way of filing written submissions. The applicant was represented by Mr. Martin Kilasara learned advocate while the respondent was represented by Mr. David Shilatu also learned advocate.

Supporting the application, Mr. Kilasara submitted that, the decision to be appealed against was delivered by Hon. Sumari J. on 17<sup>th</sup> November, 2015, aggrieved, the applicant successfully applied for leave to appeal to the Court of Appeal and the appeal was filed on 2<sup>nd</sup> November, 2016 upon supplied with Certificate of Delay dated 8<sup>th</sup> September, 2016. Mr. Kilasara went of explaining that, when the appeal was called for hearing on 9<sup>th</sup> April, 2019 it was observed that the said Certificate of Delay was materially defective and would render the appeal incompetent. The said Certificate was issued in respect of **Misc. Land Application no. 87 of 2015** instead of **Land Case No. 4 of 2011** therefore the applicant had to withdraw the appeal so that she can mend the apparent errors on record.

It was Mr. Kilasara's further submission that, since the applicant is still aggrieved by the decision subject to appeal, she preferred this application as the previous notice of appeal and leave to appeal ceased to operate when she had to withdraw the appeal. It was Mr. Kilasara's further contention that, following the






the amendment of **section 47 of the land Disputes Courts Act**, Cap 216 of 2002, leave to appeal is no longer a requirement for an appeal that originates from the High Court. He added that, the amended provision gives room for the aggrieved party to appeal in accordance with the provisions of AJA. He further cited **section 83 (1) (2) of the Court of Appeal Rules** (2009) which provides that a notice to appeal has to be lodged within 30 days from the day of decision. Since the judgment was delivered in 2011 it is undisputed that 30 days have lapsed.

Mr. Kilasara went on submitting that since the first notice and appeal was filed timely, a cause for delay was technical and not actual. He cited the decision in the case of **Fortunatus Masha V William Shija and Another** (1997) TLR 154 to support his argument to the effect that the delay which was caused by the time spent was in good faith. Mr. Kilasara finally prayed for the application to be allowed.

Contesting the application, the respondent submitted that the applicant has not demonstrated sufficient and good cause for the delay. He went on explaining that in her affidavit the applicant averred that after she had withdrawn the initial appeal "for one or another reason and a fresh appeal had to be instituted" the applicant did not give reasons why the initial appeal was withdrawn. Mr. Shilatu submitted similar omission was



questioned by the Court of Appeal in the case of **Finca (T) Ltd and Kipondogoro Auction Mart V Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 in which Koroso J.A. had this to say;

*"..the assertion that, the first appellant was going through restructuring and overhauling, is not enough without any averments in the affidavit on what this "restructuring and overhauling" entailed or how it led to their failure to proceed with an appeal."*

He argued further that, the applicant has failed to account for each day of delay as has been emphasized in numerous decisions including the case of **Bushiri Hassan V Latifa Lukio Mashayo**, Civil Application No. 3 Of 2007 (unreported) and **Karibu Textiles Mills V Commissioner General (TRA)** Civil Application No. 192/20 of 2016 (unreported). He finally prayed for the application to be dismissed with costs.

In his brief rejoinder, Mr. Kilasara maintained his stance to the effect the applicant had demonstrated good cause for the delay that warrants this court to exercise its discretionary power in granting the application.

Having considered both parties arguments for and against the application, It is a trite principle that, an application for extension of time is entirely upon the discretion of the court to grant or not



to grant. However the same has to be confined to the rules of reason and justice. See **Eliakim Swai And Another V Thobias Karawa Shoo**, Civil application No. 2 of 2016 (CAT) at Arusha (unreported), **Daudi Haga V Jenita Abdon Machafu**, Civil Reference No. 1 of 2000 and **Lyamuya Construction Co. Ltd V. Registered Trustees of YWCA of Tanzania**, Civil Application No. 2 of 2010.

The above authorities have set principle inter alia in determining good cause which warrants for granting extension of time, the applicant must account for each day of the delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action intended to be taken.

It is undisputed that, the applicant had initially filed timely a notice of appeal, leave to appeal as well as appeal to the Court of Appeal which signifies promptness and diligence, the only problem was a defective Certificate of Delay issued by Deputy Registrar which had a different case number, which resulted into withdrawal of the appeal.

In light of the above, I am satisfied that the delay was not occasioned by the applicant's negligence. The reasons for the delay as advanced by the learned counsel are justifiable.



In the case of **Lala Wino V Karatu District Council**, Civil Application No. 132/02/2018 CAT at Arusha, Ndika, J.A. held *inter alia* at page 8 that;

*"In consequence, even though both the judgment the subject of the intended appeal and the present application preceded the amendment at hand, the applicant's intended appeal would no longer be subject to obtaining leave of the Court of Appeal to this Court. In the premises, the applicant's present pursuit for extension of time to apply for leave to appeal is of no useful purpose; it has been overtaken by events. That apart, even if, for the sake of argument, the applicant were granted the extended time prayed for, he would find no competent forum that could legally take cognizance of his intended application for leave to appeal. For as the law stand here and now following the amendment under consideration, the High Court no longer has requisite jurisdiction to consider and grant leave to appeal to this Court from the decision the subject of this matter."*

I fully subscribe to this position and agree with the applicant that application for leave has been overridden by **section 9 of the**




**Written Laws (Miscellaneous Amendments)(No.3) Act,  
2018, Act No. 8 of 2018 which amended section 47 (1) of  
Land Disputes Act.**

For the reasons discussed, I find merit in this application in respect in so far as the Notice of Intention to Appeal is concerned. The applicant is hereby granted 14 days from today to file Notice of Intention to Appeal to the Court of Appeal with no order as to costs.

Dated and delivered at Moshi this 17<sup>th</sup> day of July, 2020.



  
**S. B. MKAPA**  
**JUDGE**  
**17/07/2020**