

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

**MISC. LAND APPLICATION NO. 47 OF 2019**

*(C/f Misc. Land Applications No. 89/2018, 109/2017, 113/2016, 5/2016  
and 5/2015, Land Appeal No. 52/2011 and Moshi District Land and Housing  
Tribunal Application No. 117/2008)*

**ELIAMIN A. SIYAO.....APPLICANT**

**VERSUS**

**NDESHIKARISA T. MUNUO.....RESPONDENT**

**RULING**

19/8/2020, 13/11/2020

**MWENEMPAZI, J.**

The applicant ELIAMIN A. SIYAO filed an application in this court under the provisions of section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 applying for the following orders;

- (a) That the time within which to apply for leave to appeal against the decision of the High Court in Misc. Land Application No. 5/2016 be extended.
- (b) That the costs of the application be provided for.

This application is supported by the affidavit sworn by PETER MUSHI JONATHAN, learned Advocate under the applicant's instruction. On the date fixed for hearing of the application, both the applicant and the respondent appeared in person and unrepresented. This court, for the interest of justice, ordered the hearing of the application be disposed of by way of written submission. The applicant was ordered to file written submission in support of the application on or before 28/7/2020, the respondent to file reply on 11/8/2020 and rejoinder if any on 18/8/2020. The applicant filed the submission in support of the application in accordance to the scheduled dates, but the respondent failed to file his reply submission as ordered; hence, this ruling is based on the applicant's submission.

Submitting for the application, the applicant stated that the applicant intends to appeal to the Court of Appeal against the decision of this court in Misc. Land Application No. 5/2016 that was dismissed based on technicality. He said that, upon dismissal of Misc. Land Application No. 5/2016 he immediately filed a Notice of Appeal and also applied in time for leave to appeal but the same was struck out following a preliminary objection raised by the respondent on limitation and wrong citation of enabling provision. He requested for the copy of ruling and order but he was not supplied with the same until on 15/12/2017. He immediately filed Misc. Land Application No. 109/2017 but later on it was discovered that the same had technical errors and on 26/11/2018 the court granted an application to withdraw with a leave to refile. Copy of the said order was supplied to him on 14/12/2018 and promptly, on 18/12/2018 filed Misc. Land Application 89/2018 for both extension of time and leave to appeal, but the same was struck out again on



15/11/2019 for being omnibus and the applicant was granted leave to file proper application within 14 days. The applicant applied for copy of the order unsuccessfully. It is until Friday on 29<sup>th</sup> November, 2019 they were supplied with the said copy and immediately on 3<sup>rd</sup> December, 2019 is when they filed the present application out of 14 days that he was granted, as he was supposed to file the application on 29<sup>th</sup> November, 2019.

It is his argument that, the original application for leave to appeal out of time was filed in time but the same was struck out and the applicant's efforts to seek extension of time in order to restore the same ended on being struck out or withdrawn for technical reasons. He referred this court to the case of **Fortunatus Masha vs. William Shija and Another [1997] TLR 154** and contended that the delay to file an application for leave is a technical delay hence prayed this court to grant the application.

I have considered the applicant's submission and thoroughly gone through the records. This application is made under section 11 (1) of the Appellate Jurisdiction Act (supra) which provides that;

*"Subject to subsection (2), the High Court or, where an 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"*

As provided with the law cited above, this court has discretional powers to grant an application for extension of time; but in order for the court to exercise such discretional powers, the applicant must give sufficient and reasonable cause for the delay. This position of the law has been stated in a number of cases, see the case of **Josephina A. Kalulu vs. Isaac Michael Mallya**, Civil Application No. 5 of 2009, CAT at Mwanza (unreported) and the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12/2002, CAT at Dar es Salaam (unreported), just to mention a few; where it was stated that, an application for extension of time is entirely in the discretion of the court and that extension may only be granted where it has been sufficiently established that the delay was with sufficient cause.

In this matter, the reasons for the delay that has been advanced by the applicant in the affidavit and his submission in support of the application substantially base on a technical delay. In the sense that, after Misc. Land Application No. 5/2016 was struck out on 15<sup>th</sup> day of November, 2016 the applicant filed numerous applications seeking to restore the application that had been struck out but all of them ended up being struck out or withdrawn with leave to refile based on technical reasons. But in this matter, my attention is from the time when Misc. Land Application No. 89/2018 was struck out i.e. on 15<sup>th</sup> day of November, 2019 when the application was struck out for being *omnibus* as he jointly filed an application for extension of time to file leave and application for leave to appeal in one document. After striking out of the said application, the applicant was granted 14 days from the date when that ruling was delivered in order to file a proper application. As per the records, the proper application was supposed to be



filed not later than 29<sup>th</sup> day of November, 2019. According to the applicant, after the said ruling being delivered, he applied to be supplied with the copy of an order, but the same was not supplied until on 29<sup>th</sup> day of November, 2019 which was Friday. That facts are backed up with the records, as the drawn order indicates that it was issued on 29<sup>th</sup> day of November, 2019 which was Friday. On 3<sup>rd</sup> day of December, 2019 which is Tuesday is when the present application was filed. As indicated above, the applicant struggled knocking the doors of this court in order to find justice. His original application for leave to appeal was filed in time, but the same was struck out on technical grounds. The same applies to the subsequent applications, which proves that the applicant persistently knocked the doors of this court to find justice but his efforts were fruitless as his earlier applications ended up on being struck out basing on technicalities. It was stated in the case of **Fortunatus Masha** (supra) that;

*"A distinction had to be drawn between a case involving actual delays and those such as the present one which clearly involved a technical delay, in the sense that the original appeal was lodged in time but had been found to be incompetent for one or other reasons and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after pronouncement of the ruling of the court striking out the 1<sup>st</sup> appeal. In these instances, an extension of time needs to be granted."*

The case cited above, squarely apply in the present case where the original Notice of Appeal and application for leave to appeal were filed within time but unfortunately were struck out basing on technical issues. Therefore, this

court find that, the delay was not caused by the applicant's inaction or negligence.

Based on the above, I therefore find that there is a sufficient cause for the delay to file an application for leave as such, I hereby grant the application. I have noted the respondent seems not to be abled economically, at least, visually, and in my view, it will be fair if each party will take care of his or her own costs. The applicant is allowed to file an application for leave to appeal to the Court of Appeal within fourteen (14) days from today.

Order accordingly.



  
**T. MWENEMPAZI**

**JUDGE**

**13/11/2020**

Ruling delivered in court in the presence of parties.

  
**T. MWENEMPAZI**

**JUDGE**

**13/11/2020**