

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC. LAND APPLICATION NO. 98 OF 2019

(From High Court of Tanzania Misc. Land Application No. 123 of 2018, Land Appeal No. 44 of 2011; Original Land Application No. 130 of 2006, District Land and Housing Tribunal for Arusha at Arusha)

LOGOLIE LENGAISA APPLICANT

Versus

PHILIPO LEVOOS RESPONDENT

RULING

October 7 & December 15, 2020

Masara, J

The Applicant preferred the instant application under Section 11(1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2002, praying for an extension of time within which to file an application for leave to appeal to the Court of Appeal against the decision of this Court, Mwaimu, J., in Land Appeal No. 44 of 2011 delivered on 28th February, 2014. The Application is supported by an affidavit of Dr. Ronilick Eli Kasambala Mchami, advocate for the Applicant. The Respondent filed a Counter Affidavit opposing the Application.

The facts from which this application arose, as obtained from the affidavit and annexes in support of the Application, can be summarised as follows: The Applicant filed Land Appeal No. 44 of 2011 in this Court against Land Application No. 130 of 2006 which was decided by the District Land and Housing Tribunal for Arusha. He lost in that appeal. Being aggrieved, the Applicant filed an appeal to the Court of Appeal vide Civil Appeal No. 136 of

2016. That appeal was struck out for two reasons; one, the certificate of delay was defective as it omitted some of the days without any explanations and, two, it was found to be time barred. Undaunted, the Applicant filed Misc. Land Application No. 123 of 2018, seeking to be granted extension of time to file a fresh Notice of Appeal. In its ruling delivered on 20/11/2019, this Court granted the prayer for an extension to file Notice of Appeal out of time. On 21/11/2019, the Applicant filed his Notice of Appeal to the Court of Appeal. Thereafter, on 28/11/2019, he filed the instant application seeking for extension of time to file an application for leave to appeal to the Court of Appeal.

The Applicant is represented by Dr. Ronilick Mchami, learned advocate, while the Respondent is represented by Mr. Emmanuel Kinabo, learned advocate. The application was heard *viva voce*.

Submitting in support of the application, Dr. Mchami contends that the Applicant has preferred this Application after this Court granted him an extension of time to file Notice of Appeal out of time on 20/11/2018. He submitted that as the intended appeal is a second one, leave is a mandatory requirement of the law under section 47(2) of the Courts (Land Disputes Settlements) Act, Cap. 216. Dr. Mchami fortified that once this application is granted, he will have to apply for leave before this court, therefore he prays that the application is granted.

On his part, Mr. Kinabo objected the prayer for extension of time contending that the Applicant's appeal was struck out not only due to defects in the certificate of delay but also due to miscalculations. In his opinion, the Applicant has not given sufficient reasons for the delay as only paragraph 5 of the Applicant's affidavit gives reasons why the application has been preferred; that is, leave is the requirement of the law. Mr. Kinabo argued that the mere fact that it is the requirement of the law does not constitute sufficient reasons for extension of time to be granted. The learned advocate stressed that neither the affidavit in support of the application nor the submissions by the counsel for the Applicant have disclosed sufficient reasons for extension of time since applications of this nature courts have to consider balance of interest between the right of appeal of the Applicant viz a vis interests of the party who has a decision in his favour. That the Respondent who has had the decision in his favour since 28/2/2014 has not enjoyed the fruits of the decision while the Applicant enjoyed the right of appeal through an Appeal to the Court of Appeal which was struck out due to negligence of the Applicant.

Mr. Kinabo added that the Court has to ascertain whether in the intended application for leave there is a point of law to be determined. In his view, in this application there is no such indication in the affidavit or oral submissions so there is no way the Court can ascertain whether there are any chances of success in the application for leave. Basing on those reasons, the learned counsel prays that the application be dismissed.

In a brief rejoinder submission, Dr. Mchami contended that the arguments by Mr. Kinabo are arguments from the bar which do not feature in the counter affidavit of the Respondent. He therefore prayed that the same be disregarded. Further, Mr. Mchami submitted that this being an application for extension of time, it does not require legal reasons to support the application, as this is not extension of time to appeal against the decision of the lower court. It was also Dr. Mchami's contention that an application for leave need not be based on a point of law and that whether the appeal was struck out for more than one ground that is not important. Mr. Mchami argued that as the Respondent was granted costs by the Court of Appeal, he stands to suffer nothing if this application is granted. Lastly, he contended that following the grant of application to file Notice, it follows that they cannot utilize such Notice unless leave is granted.

I have thoroughly considered the parties respective affidavits and the rival submissions of the advocates for the parties. The only contentious issue is whether the delay in filing the Application for Leave to Appeal to the Court of Appeal was necessitated by sufficient cause.

I need to state at the outset that sufficient reasons or causes for the delay is *conditio sine qua non* for an application for extension of time to be granted. This position has been followed in a number of cases, including the Court of Appeal decisions in ***Athumani Amiri Vs. Hamza Amiri and Adia Amiri***, Civil Application No. 133/02/2018; ***Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women***

Christian Association of Tanzania, Civil Application No. 2 of 2010; ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (all unreported); ***Kaiunga and Company Advocates Vs. The National Bank of Commerce Ltd*** [2004] TLR 235; ***Blue line Enterprises Ltd Vs East African Development Bank*** and Misc. Civil Cause No. 135/95 (unreported), among others. The Court of Appeal decision in ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 (unreported) it held *inter alia*:

*"Before dealing with the substance of this application in light of the rival submissions, I find it apposite to restate that although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised **if good cause is shown**. Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the **length of the delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.**"*(emphasis supplied)

The question is whether the Applicant's application can be sufficiently covered by the sufficient cause circumstances above explained. Dr. Mchami submits that what is stated in his affidavit explains good cause for the delay. He adds that since the requirement to apply for leave is a legal requirement, and since application to file Notice of Appeal out of time was granted by this Court, thus, if this application is not granted the Notice will be rendered ineffective. Mr. Kinabo does not subscribe to that view. In my considered view, the Applicant appears to have been diligent in pursuit of what he

believes to be his rights. That is why he immediately filed the application for extension of time to file Notice out of time as soon as his appeal was struck out. Thereafter, he filed the instant application after filing the requisite Notice. Therefore, the delay is not inordinate, the Applicant acted diligently without sloppiness or negligence. The Applicant has not slept over his rights and has been diligent. His main ground for delay is what we refer to in law as a technical delay which has been held to be sufficient ground for extension of time. In this regard, I am fortified with the Court of Appeal decision in ***Fortunatus Masha Vs. William Shija and Another*** [1997] TLR 154 which held:

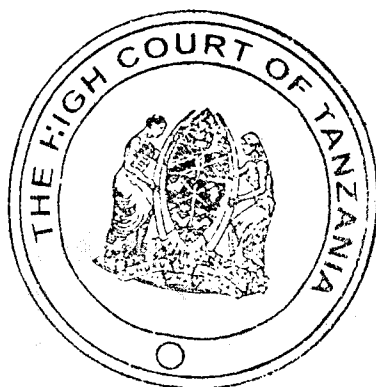
"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the Applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

See also ***Bank M. (Tanzania) Limited Vs. Enock Mwakyusa***, Civil Application No. 520/18 of 2017; ***Salvand K. A. Rwegasira Vs. China Henan International Group Co. Ltd.***, Civil Reference No. 18 of 2006; ***Zahara Kitindi & Another Vs. Juma Swalehe & 9 others***, Civil Application No. 4/05 of 2017; ***Yara Tanzania Limited Vs. DB Shapriya and Co. Limited***, Civil Application No. 498/16 of 2016 and ***Samwel Kobelo Muhulo Vs. National Housing Corporation***, Civil Application No. 302/17 of 2017 (all unreported).

It is therefore the finding of this Court that the Applicant was prevented from filing the Application for leave of this Court to appeal to the Court of Appeal due to technical reasons which are explainable and excusable. I agree with the learned advocate for the Applicant that the Applicant has managed to prove that the delay was necessitated by sufficient cause.

Consequently, I allow the Application and order that the Applicant files the intended Application for Leave to appeal to the Court of Appeal within 14 days from the day of this Ruling. Costs shall abide to the outcome of the intended application.

Order accordingly.




Y. B. Masara

JUDGE

15th December, 2020