

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

MISCELLANEOUS LAND CASE APPLICATION NO. 43 OF 2020

*(Arising from Land Appeal No. 41/2015 of High Court Tabora,
Original Land Application No. 44/2014 of Kigoma District Land and
Housing Tribunal)*

HAMISI MDIDA ----- 1ST APPLICANT

SAID MMBONGO ----- 2ND APPLICANT

VERSUS

THE REGISTERED TRUSTEES

OF ISLAMIC FOUNDATION -----RESPONDENT

RULING

18/03 & 24/03/2021

BAHATI, J.:

The applicants **Hamisi Mdida** and **Said Mmbongo** instituted this application seeking an order that:-

- i. This court be pleased to extend the time for giving notice of intention to appeal to the Court of Appeal of Tanzania against Land Appeal No. 41/2015 High Court at Tabora.*
- ii. Costs of this application be provided for*
- iii. This honorable court be pleased to grant any other relief(s) it deems fit to grant.*

This application for extension of time has been made by way of chamber summons under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]. The application is supported by an affidavit of Mr. Musa Kassim, learned counsel for applicants.

When the matter came for hearing Mr. Mussa Kassim learned counsel appeared for applicants while Mr. Amos Gahise, learned advocate appeared for the respondent. Both parties urged this court to adopt their affidavits to form part of their submissions.

Mr. Kassim submitted that the judgment in Land Appeal No. 41/2015 was passed on 26/07/2016 and the applicants filed a notice of appeal on the following day 27/07/2016. As depicted in paragraph 3 of the affidavit, the Court of Appeal of Tanzania declared the appeal to be incompetent for the reason that the Deputy Registrar who issued the certificate of delay had no powers to issue the same to the applicants; his powers are limited to the High Court that is why they made this second application.

That, the judgment of the Court of Appeal which declared the appeal incompetent was passed on 17/12/2020 and the applicants received a copy of the judgment on 18/12/2020. Four days later on 21/12/2020, this application was filed promptly after the appeal had been declared incompetent.

Mr. Kassim cited the case of **Tumsifu Anasi Maresi vs Luhende Jumanne Seleman and National Microfinance Bank Limited (NMB)**

Misc. Land Case Application No. 91 of 2017 to support his argument that, acting promptly is a good cause for extension of time.

Another ground made by the applicants is on the illegality of the proceedings of the District Land and Housing Tribunal that assessors were not given time to give their opinion as required by law. He added further that, illegality is a good cause for the court to consider an application for extension of time.

In reply, Mr. Amos Gahise, learned counsel opposing the application he prayed to this court to dismiss the application for the reasons that the grounds submitted by the applicants contain a delaying tactic to bar the respondent to recover the property which is contrary to courts general principle that litigations must come to an end.

That, the grounds given are not condonable because a delay was attributed to the applicant's negligence. That, the court's judgment was delivered on 26/07/2016 the applicants had ample time to file an appeal.

On the issue of illegality, Mr. Gahise submitted that it does not go to the root of justice, and the tribunal chairman when reading the judgment stated why one assessor was absent and the other was at Kibaha attending his sick child who later on passed away.

Mr. Gahise added that the chairman determined who was the owner of the property and that is a reason the illegality did not go to the root of justice.

Having considered the submissions of the parties and various authorities, the main issue for consideration is whether or not sufficient reasons have been established by the applicants.

It is a common ground that application for extension of time like the one in hand is under the discretionary powers of this court and the same has to be exercised judiciously. The applicant's task has been always to establish sufficient reasons for the delay. There is no hard and fast rule on what constitutes "sufficient reasons" (See the case of **Benedicto Mumello V Bank of Tanzania, Civil Appeal No 12 of 2002**).

In determining whether sufficient reasons have been established or not, courts have been taking into consideration a number of factors such as the magnitude of delay and the applicant's diligence in pursuing the matters and whether by granting the application the other party will be prejudiced, just to mention a few. The list of factors to be considered is not exhaustive.

Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] empowers the High Court when satisfied by the applicant to extend the time for giving notice of intention to appeal from a judgment of a High Court.

In this application, it is undisputed that the applicant's appeal at the Court of Appeal Civil Appeal No. 59/2020 by the Applicants was declared incompetent by the CAT on Thursday of 17th December 2020 on the ground that the Deputy Registrar of this court had no

power to issue a certificate of delay in matters involving records of the CAT. The CAT ruling striking out the Applicants' Civil Appeal No. 59/2020 of which leave is desired. As correctly submitted by the applicants affidavit in support of the application has provided sufficient reason.

Since the period spent in the appeal is justifiable it is apparent that the applicants had been in the court's corridors since 2016 when the judgment of the High Court was delivered. The only thing that went wrong on their side is that the Deputy Registrar issued them a certificate of delay out of statutory power conferred on him and it rendered their appeal incompetent, on that ground alone I am convinced that the applicants have persuaded this court to grant the application.

Having gone through the affidavit deposed by the applicants, the law is clear in such applications, when the issue of illegality is raised in the impugned decision that amounts to good cause for the extension of time. This position was celebrated in ***VIP Engineering and Marketing Limited and Two Others vs Citibank Tanzania Limited Consolidated Civil Reference No. 6, 7, and 8 of 2006 (unreported)*** it was held that: -

"It is settled law that a claim of the illegality of the challenged decision constitutes sufficient reason for the extension of time under Rule 8 of the Court of Appeal Rules regardless of whether or not a reasonable

explanation has been given by the applicant under the rules to account for the delay”

I therefore, find the application meritorious and grant it. The applicants are at liberty to file the notice of appeal within ten (10) days and petition of appeal within 30 days from the date of this order.

Order accordingly.



A.A BAHATI

JUDGE

25/03/2021

Judgment delivered under my hand and seal of the court, this 25th day March, 2021 in the presence of both parties.



A. A. BAHATI

JUDGE

25/03/2021

Right of appeal is explained.



A. A. BAHATI

JUDGE

25/03/2021

