

IN THE HIGH COURT OF TANZANIA

AT DODOMA

MISC. LAND APPLICATION NO. 64 OF 2020

(Originating From Land Application No. 99 of 2019 of the High Court of Tanzania at Dodoma and Land Application No. 128 of 2018 of the District Land and Housing Tribunal for Singida).

MARTIN ITAMBU

(as administrator of the

Estate of Yustina J. Njiku

}.....**APPLICANT**

VERSUS

SHABAN DEDU.....RESPONDENT

RULING

DATE OF RULING – 19/03/2021

HON. L. MANSOOR, J.

This application, brought under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R:E 2019; seeks this court among others to grant the applicant an extension of time within which to file an application for leave to appeal to the Court of Appeal of Tanzania against the judgment of this Court in Land Appeal No. 99 of 2018 delivered on 30th June, 2020.

This application was argued by way of written submission whereby the applicant was represented by Mwashitete Paulo David Learned Advocate, and the respondent was represented by Thomas Thomson Lighola Learned Advocate.

The applicant in his affidavit sworn by Lucas Alto Komba, an advocate and in his submissions stated that having been aggrieved by the decision of this Court in Land Appeal No. 99 of 2018 delivered on 30th June, 2020, the applicant lodged a notice of intention to appeal to the Court of Appeal of Tanzania, on 13th July, 2020.

Thereafter through his advocate on 30th July, 2020 he presented an application for leave to appeal to the Court of Appeal of Tanzania to this Court. That, it was one Fatuma Nkamirwa, the Registry Officer who directed him to file his application electronically.

That, he did as directed on the same day and after some days he received a control number 991400255139 for payment of filing fees.

It was further stated that, payment could not ensue through the said control number and upon consultation with the IT technician of this Court one Ally he was told that such problems do occasionally happen and that he would update the said control number. That, it was until

14th Sept. 2020 the control number was updated whereby he was advised to file afresh but by this time the time to file the said application for leave to appeal had already lapsed.

It was the applicant's submissions that the reasons for the delay were not deliberate or inaction and so he prayed that his granted her application be granted.

Mr. Thomas submitting for the respondent contended that the applicant failed to furnish this Court with good and sufficient cause to warrant him extension of time, that he failed to act diligently and he did not account for each day of delay marking 77days of delay from the date of the impugned judgment, that is 30th June, 2020. The respondent relied his arguments in the case of **Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor, Civil Application No. 342/1 of 2017 CAT at Tabora.**

Looking on the applicant's application, indeed on 13th July, 2020 he lodged his notice of appeal before this Court, **see annexure 'A2'**. The applicant contended that on 30th July 2020, on exact last day/deadline he filed his application for leave before this Court, only to receive a control number after some days, but again he could not effect payment as it was to be updated first. It was until 14th Sept. 2020 when

it was updated. Indeed looking at **annexure 'A4'** it shows that a bill of THz 70000 was generated on 27th Aug. 2020 which was to be paid vide the control number 991400255139.

Just from this point if the applicant lodged his application for leave on 30th July 2020 which was within the time confines but a control number was processed almost a month later, and was issued to the applicant on 14th Sept 2020, this Court to otherwise than granting this application will be punishing an innocent person for others faults.

As the authority supplied by the respondent speaks, that is the case of **Yusufu Same & Hawa Dada Vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 CAT (unreported) that in application for extension of time it is entirely in the discretion of the court to grant or refuse it. Though however, this discretion has to be exercised judiciously where the overriding consideration is, there must be sufficient cause for so doing.

In light of the reasons for the delay advanced by the applicant, this Court is satisfied that, are good and sufficient for a court to grant the application for extension of time within which to apply for leave to appeal to the Court of Appeal.

The Applicant is granted 14 days from today to file the application for leave to appeal. Each party to bear his/her own costs.

It is so ordered.




L. Mansoor

JUDGE

19/03/2021