

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SONGEA**

**AT SONGEA**

**MISCELENEOUS LAND CASE APPLICATION NO.14 OF 2020**

**(Arising from Land case Appeal No. 11 of 2008)**

**CHRISTIAN HAULE..... APPLICANT**

**Versus**

**MARIANUS MSELEWA (AS ADMINISTRATOR OF THE ESTATE OF  
OCTAVIAN MSELEWA) ..... RESPONDENT**

**RULING**

**Date of Last Order: 23/03/2021.**

**Date of Judgment: 20/04/2021.**

**BEFORE: S.C. MOSHI, J.**

The application is two-fold. It is for extension of time to apply for leave to appeal to the court of appeal of Tanzania against decision of this court in Land Appeal No. 11 of 2008 and for extension of time to file an application for requesting the court to certify that there are points of law involved in the intended appeal. The application is made under section 47(1) and 47 (2) of the Land Disputes Court Act, Cap. 216 R. E 2019 and section 11(1) of the Appellate Jurisdiction Act Cap. 141 R. E 2019. The application is supported by an affidavit deposed by Christian Haule (the applicant). The respondent resisted the application.

During hearing of the application, the applicant was represented by Mr. Edson Mbogoro learned advocate whereas the respondent appeared in person.

Mr. Mbogoro submitted among other things that, they are praying for two main prayers namely, for the court's leave for the applicant to appeal to the Court of Appeal against application number 11 of 2018 out of time prescribed by the law. Secondly to apply to this court to grant certificate that there are points of law involved to be looked upon by the court of Appeal out of time since the case started at the Ward Tribunal. He adopted the affidavit sworn by the applicant Christian Mselewa.

He submitted that the reasons for delay are given in the affidavit in paragraphs 5,6, and 7 of the applicant's affidavit. It was his submission that the delay was due to technical reasons.

Regarding certificate on point of law, he said that if the court allows this application there are great chances of success. He said that the case has taken long but it concerns land, which is still there.

In reply the respondent adopted his counter affidavit, he said that the delay is inordinate as the applicant started to apply to go to the Court of Appeal in 2014 and they have all the documents i.e the judgements.

Having heard the parties, the issue for determination is whether the applicant has shown good cause to warrant the court to exercise its discretion to extend time.

I would like to state at the outset that the proper provision in this application was to be section 11(1) of the Appellate Jurisdiction Act Cap.



141 R.E 2019. Section 47(1) and 47 (2) of the Land Disputes Court Act Cap. 216 R.E 2019 were to come after the prayers in this application have been granted. Deliberating on them at this juncture would be like riding a cart before the horse. However, with the overriding principle this anomaly is curable as wrong as citation didn't prejudice the respondent. See the case of **Samwel Munsiro vs. Chacha Mwikwambe**, Civil Application No. 539/08 of 2019, Court of Appeal sitting at Mwanza.

The law gives power to the court to extend the time for the applicant to file an application or appeal out of time prescribed by the law upon showing good cause for not doing such act within the prescribed time. Factors to be taken into account in determining whether or not to exercise the court's discretion have been outlined in various decisions of the court of appeal and this court. Admittedly, such factors are not necessarily exhaustive but at the moment, they include, cause of the delay, length of the delay, whether or not the applicant has accounted for the delay and degree of prejudice to the respondent and whether there is illegality or any issue of law of sufficient public importance in the decision sought to be challenged. See the case of **Azizi Mohamedi vs. R**, Criminal Appeal No. 84/07 of 2019 Court of Appeal sitting at Mtwara (Unreported) and **Lyamuya Construction Co. Ltd vs. Registered Trustees of Young**

**Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

I will subject the above authorities to the facts in the instant application. The applicant's reasons for the delay are as shown in the affidavit paragraphs two to eight. He said that,

*2. that I was the respondent in and case appeal no. 11 of 2008 which was decided in favour of the applicant (the respondent in this application) copy of the said judgement is annexed hereto and marked "CH1.*

*3. That I filled all relevant documents for processing an appeal e.g notice of appeal and letter requesting for record of appeal within time prescribed by law.*

*4. that unknown to me, copy of the letter requesting for copy of record got misplaced immediately after lodging it thereby putting the entire appeal process into a stand still.*

*5. that upon becoming aware on the misplacement of the said letter I made efforts to re-initiate appeal process by filling an application for leave to file a fresh notice of appeal out of the time prescribed by law which was duly granted on 11<sup>th</sup> August 2020. Copy of the ruling is annexed hereto and marked "CH2".*



*6. That on 20<sup>th</sup> August 2020, I filed the notice of appeal and requested for copies of record of appeal relevant copies are annexed hereto and marked CH3 collectively.*

*7. that on 2<sup>nd</sup> November 2020 the applicant filed an application for leave to the court of appeal but on 12<sup>th</sup> November 2020 the said application was withdrawn on account of some legal technical defects. Copy of the order of the court is annexed hereto and marked CH4.*

Considering applicant's averments, it is my considered view that the applicant has been diligently pursuing his right. Even after his application was withdrawn, he filed the present application within fourteen (14) days.

In paragraph eight he stated that the intended appeal has good prospects of success as there are points of law for which a certificate of this court will be sought that is the effect of long prescription on land in law and whether Ngoni Customary law was misapplied. The position of law is well set. It was held by the court of Appeal in the case of **Aziz Mohamed vs. R**, Criminal Application No. 84/07 of 2019 Court of Appeal sitting at Mtwara (unreported), that chance of success is not relevant factor by itself because the court in an application for extension of time is not concerned with the merits of the intended application or appeal rather on whether the applicant has shown good cause for the order sought.


on whether the applicant has shown good cause for the order sought. However, discussing chances of success will be beyond the power of the court in this application. See also the case of **The Regional Manager Tanroads vs. DB Shapriya and Company Ltd**, Civil Application No. 29 of 2012 Court of appeal sitting at Mtwara (Unreported).

In the event, I find that this application is meritorious taking into account the first reason which relates to technical delay. I hereby grant it. The applicant should file the intended application for leave to appeal to the court of appeal and application seeking a certificate on point of law within fourteen days from the date of delivery of this ruling.

Each party to bear its own costs

It is so ordered

Right of Appeal Explained.

  
**S.C. MOSHI**  
**JUDGE**  
**20/4/2021**

