

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

APPLICATION No. 35 OF 2020

(Emanating from the decision of this Court in Land Appeal No. 20 of 2016 and Misc. Land No. 39 of 2018 High Court of Tanzania Shinyanga Registry)

SASA MAPOLU.....APPLICANT

VERSUS

KASIMU NYANIKILA.....1ST RESPONDENT

MARIA MADUHU.....2ND RESPONDENT

CHRISTINA MASANJA.....3RD RESPONDENT

DANIEL SITA.....4TH RESPONDENT

ESTHER MASUNGA.....5TH RESPONDENT

CHAIRMAN OF LUGURU VILLAGE COUNCIL.....6TH RESPONDENT

RULING

25th March & 23/4/2020

MKWIZU, J:

On 17th July, 2020 the applicant **Sasa Madulu**, filed his application under section 11 (1) of the Appellate Jurisdiction Act [Cap 141 RE 2019] and section 14 (1) of the Law of limitation Act [Cap 89 RE 2019] for extension to file Notice of intention to appeal and an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in

Land Appeal No. 20 of 2016 dated 12/10/2018. The application is supported by an affidavit deposed to by the applicant and fact advanced during the hearing of this application.

The brief background of the matter as gleaned from the records are that, the applicant sued the respondents in Land Application No. 7 of 2014 of Maswa District Land and Housing Tribunal for trespass to land. The trial Tribunal determined the case and declared the Respondents lawful owners of the disputed land. Unsuccessfully, applicant lodged in this court, Land Appeal No 20 of 2016. On 12/10/2018 which was dismissed for want of merit.

Dissatisfied with this court's decision, applicant initiated the appeal process to the Court of Appeal. His application for leave to appeal was on 13/11/2019 struck out for incompetence hence this application.

When the application was called on for hearing, the applicant had the services of Mr. Paul Kaunda Advocate, 1st, 2nd 3rd and 6th respondents were present in person (unrepresented) while the 4th and 5th respondents were

not in court without justifications and therefore the application proceeded ex parte against 4th and 5th respondents.

Submitting on the reasons for the delay, Mr. Kaunda stated that after the High Court decision, the applicant filed Notice of appeal and application for leave to appeal to the Court of Appeal but the said application was struck out on technical grounds. Applicant was at that time already late to pursue his right of appeal. He exercised diligence all along and therefore the delay was not caused by his negligence stressed Mr. Kaunda who cited the decision of this court in **Kashinje Mawe vs Hamis Butondo**, Misc. Civil Appeal No. 1 of 2020 urging the court to grant the application with no order as to costs

1st, 2nd, 3rd and 6th respondents opposed the application contending that applicant have shown no good reason for the court to extend the time sought. They prayed for the dismissal of the application with cost.

I have considered the prayers in the chamber summons, the supporting affidavit on record, and the competing submissions of the parties. Protrusive point is whether applicant has advanced sufficient reasons for

the court to extend time to institute the intended notice of intention to appeal as well as the application for leave.

It has been said in times without numbers that whether or not to grant an application of this nature is a discretionary power of the court but which must be exercised judiciously upon good cause shown.

The reasons for the delay were deposed under paragraphs 11 and 12 of the supporting affidavits thus.

11. That, the applicant still aggrieved by the decision of this court, he preferred an application for leave to appeal to the Court of Appeal of Tanzania whereby the same was struck out for being accompanied by a defective jurat of attestation. (A copy of the said order is hereto appended and marked as annexure A2)

12. That, the applicant delay in filing again application for leave is not ordinate and the same has not been occasioned by the applicant's dilatory conduct.

The decisions subject matter of the intended appeal was delivered on 12/10/2018 and two weeks after, that is, on 25/10/2018 Applicant filed an Misc. Application No. 39 of 2018 for leave to appeal which was struck

out on 13/11/2019 for being incompetence. From there as evidenced by the records, applicant stayed silent to 17/7/2020 when he came again in court with the present application.

Looking at the sequence of events, it is clear that applicant was persistently in court from 12/10/2018 when his appeal was dismissed to 13/11/2019 when his application for leave was struck out by this court. Guided by the decision in **Robert Schelten V. Balden Narataran Vaima and 2 others**, Civil application No 112 of 2016 (unreported) I cited in the case of **Kashinje Mawe** (supra),and the case of **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.**, Civil Reference No. **18** of **2006** (unreported), I find this period of time an excusable technical delay.

From there however, applicant spent seven (7) months from 13th November, 2019 to 17th July, 2020 out of court. This time needs to be accounted for. Neither the affidavit nor the counsels submissions has sufficient explanation as to why applicant spent good seven(7) months to bring in court this application for extension of time. In **Lyamuya**

Contraction Company Ltd vs Board of Registered Trustees of Young Woman's Christian Association of Tanzania, Civil Application No. 2 of 2010 (Unreported) the following factors were itemized as guidelines when considering an application for extension of time that:

a. "The applicant must account for all the period of delay

b. The delay should not be inordinate

c. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

d. If the court felt that there are other sufficient reasons, such as existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged"

See also the case of **Dar es Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987 (Unreported) and **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185

The Applicant in this application failed totally to account for the delay. The interval of seven (7) months delay unaccounted for is, in my view

unwarranted and therefore inexcusable. As a result, the application is dismissed for lacking in merit. Respondents to have their costs. Order accordingly.

DATED at SHINYANGA this 23rd day of APRIL, 2021



E. Y. MKWIZU
JUDGE

23/04/2021

