

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

**MISC. APPLICATION No. 53 OF 2020**

*(Emanating from the High Court of the United Republic of Tanzania in District Registry of Shinyanga in Land Appeal No. 03 of 2018; Originating from Land Application 123 of 2008 of the District Land and Housing Tribunal of Shinyanga )*

**ADBI RAHMANI DRAMA.....APPLICANT**

**VERSUS**

**HERSI WARSAMA MOHAMEDI..... RESPONDENT**

**RULING**

*12<sup>th</sup> & 30<sup>th</sup> April, 2021*

**MKWIZU,J:**

This is a ruling in respect to the application by the applicant **ADBI RAHMANI DARMA**, for enlargement of time to file notice of Appeal and application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Appeal No. 3 of 2018 dated 17/08/2018. The application is made under the provision of section 11 (1) of the Appellate Jurisdiction Act [Cap 141 RE 2019] and is supported by the affidavit sworn by JOHANES MUTABINGWA MBATINA learned advocate. At the hearing of the application, Mr. Innocent Kisigiro Advocate represented

the applicant while the respondent had the services of Mr. Kasimu Gilla also learned advocate.

I have considered the chamber summons, supporting affidavit and the parties' submissions. The reasons for the delay advanced in the affidavit as well as the submissions by the applicant counsel are two, technical delay and illegality of the decision sought to be appealed against. On the technical delay, the affidavit states that, after the dismissal by this court of Land Appeal No. 3 of 2018 which was against the decision of the Land Application No. 123 of 2008 of Shinyanga District Land and Housing Tribunal on 17/8/2018, applicant filed Misc. Land Application No. 28 of 2018 praying for extension of time to file appeal against the same decision of the DLHT to the High court. This court on 14/8/2018 struck out the application on the ground that after the dismissal order in Land Appeal No 3 of 2018 by this court, the remedy available to the applicant was either to apply for review before this court or else appeal or apply for revision to the Court of Appeal against the said dismissal order.

Tirelessly, on 19/8/2020 applicant sought for the copy of the ruling in Misc Land application No 28 of 2018 which was supplied to him on 7/9/2020 and on 9/9/2020 he filed this application.

On the issue of illegality Mr. Kisigiro submissions was to the effect that in paragraphs 3 and 4 of the affidavit applicant raised an issue of illegality of the impugned decision which the Court of Appeal ought to correct in appeal in the event this application is granted. He insisted that, applicant have been in this court all along from when Appeal No. 3 of 20218 was dismissed to date . He cited the case of **Mohamed Salum Nahhdi vs Elizabeth Jeremia**, Civil Reference No. 14/2017 and **Hamis Mohamed (Administrator) vs Mtumwa Moshi (administrator)**, Civil Application No. 407/17/2019 ( All unreported) urging the court to grant the application as prayed.

The application is opposed. Mr. Gilla, counsel for the respondent argued that the issue of technical delay do not arise as it presupposes that previous appeal was timely lodged but was struck out on the technical



ground. He contended that, because the decision in Land Appeal No 3 of 2018 was dismissed for being time barred, this reason cannot stand.

Mr. Gilla went further arguing that, extension of time is an equitable discretionary remedy which is granted upon sufficient reason by the applicant. According to Court of Appeal decisions, stated Mr. Gilla, for the application of this nature to be granted, applicant must account for each day of the delay, must show diligence, affidavit must show point of law of sufficient importance. He cited the case of **Wambura N.J Waryuba vs Principle Secretary Ministry of Finance**, Civil Appeal No. 320/10/2020 (Unreported) .

Mr. Gilla said, applicant's affidavit did not account for each day of the delay. While paragraph 6 says Land Appeal No. 3 of 2018 was dismissed on 17/8/2018, paragraph 7 says Misc. Application No. 28/2018 was filed on 23/8/20218 and therefore six days were not accounted for. He contended that in his affidavit applicant submitted that the time between the dismissal of the Appeal and 23/8/2028 he was applying for copies of the judgment but no such letter was availed in court. Again, submitted Mr. Gilla, five days period between 14/8/2020 when Misc. Application No. 28/2018 was

struck out to 19/8/2020 when applicant applied for copies of the ruling were not accounted for. And further that the averment in paragraph 10 and 11 of the affidavit that applicant was supplied with the copy of the Ruling on 7/9/2020 is not supported by evidence. He cited the decision in **Wambura N.J. Waryuba's case** (Supra) at page 7 stating that any facts alleged by the applicant must be proved. Mr. Gilla pointed out to the court that the time between 7/9/2020 to 10/9/2020 was also not accounted for.

In Conclusion Mr. Gilla said, in totality 12 days were not accounted for, and therefore the application should not be granted. The case of **Isaack Sebegele vs Tanzania Portland Cement Co. LTD**, Civil Reference No. 26 of 2004 ( Unreported) was also cited.

On the issue of illegality, Mr. Gilla explained that paragraphs 3 & 4 of the affidavit discloses no any point of law for the court of Appeals determination, He refeed the court to the case of **Matiko Mabanga Vs. Ophir Energy PLC & others**, Civil Application No. 463/01/2017 ( unreported) insisting that , any point of law must be of sufficient importance and that it must be on the face of the record. He insisted that

applicant's affidavit does not disclose any sufficient point to enable this court to grant extension of time. What is indicated is a sloppiness and negligence on the part of the applicant, that is why he has been filing incompetent application. For that reasons Mr. Gilla prayed for the dismissal of the application with costs.

In rejoinder, Mr. Kisigiro submitted that, they accounted for each day of the delay. After the dismissal of Land appeal No. 3/2018 that the applicant needed the copy of the decision. They applied for and they only utilized 5 days to get a copy of the decision and prepared the document for filing and took the action promptly. He said after the striking out of Application No. 28 of 2918, they prayed for copies of the ruling and immediately prepared and filed the documents in court. He insisted that, the delay was caused by the court on its own process of admission of documents but they had acted diligently.

Having considered the parties submissions, the issue which need this court's decision is whether the application has shown good cause for extension of time to file Notice of appeal and an application for leave to appeal to the Court of Appeal of Tanzania.



I will start with the issue of illegality. As rightly submitted by the respondent's counsel, paragraph 3 and 4 of the applicant's affidavit is silent on the issue of illegality. The mentioned paragraph reads:

*3. That on 13<sup>th</sup> December, 2017 the advocate who presented the applicant at the trial tribunal Mr. P.K.R Rugaimukamu wrote a letter with Reference No. PRKR/IJK/MWZ/SHYDL&HT No. 123/2018 dated 13<sup>th</sup> December, 2017 applying to be supplied with a copy of Judgment and decree in the aforementioned Land application No. 123 of 2008 of District Court and Housing Tribunal for Shinyanga at Shinyanga for Appeal purpose. Such letter with Reference No. PRKR/IJK/MWZ/SHYDL&HT No. 123/2008 date 13<sup>th</sup> December, 2017 was received at the District Land and Housing Tribunal for Shinyanga on 15<sup>th</sup> December, 2017. A copy a letter with Reference No. PRKR/IJK/MWZ/SHYDL&HT No. 123/2008 date 13<sup>th</sup> December, 2017 is annexed hereto and marked as annexure AK1.*

*4. That On 19<sup>th</sup> January, 2018 while holding a brief of Mr. P.R.K Rugaimukamu who was the applicant's advocate at the trial Tribunal, I was supplied with copies of judgment and decree in the aforementioned Land Application No. 123 of 2008 of District land and Housing Tribunal for Shinyanga at Shinyanga which were duly certified on 28<sup>th</sup> December, 2017. A copy judgment*

*and decree of District Land and Housing Tribunal for Shinyanga in Land Application No. 123 of 2008 are annexed hereto and collectively marked as Annexure AK2*

Neither paragraph 3 and 4 quoted above, nor the rest of the affidavit speaks of any issue of point of law of sufficient importance for Court of Appeal's consideration in relation to the dismissal order dated 17/8/2018 in Land Appeal No 3 of 2018. This reason, is therefore baseless.

On the technical delay a lot has been said on the affidavit and applicant's counsel's submissions. There is no denial that applicants Land Appeal No 3 of 2018 was dismissed by this court on 17/8/2018 and on 23/8/2018 application No 28 of 2018 was filed in view of requesting for enlargement of time to file a fresh appeal from the decision of the DLHT. This application was again struck out on 14/8/2020 and on 19/8/2020 the applicant applied for the copy of the ruling which was supplied on 7/9/2020 before the filing of this application on 9/9/2020. In the case of **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 Court explained factors to be taken into account while considering an application for extension of time:

- 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 other sufficient reasons, such as existence of point of law of sufficient importance, such as the illegality of the decision sought to be challenged"

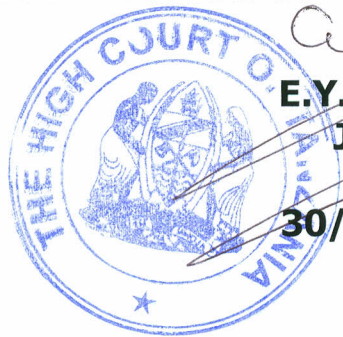
With due respect to the respondent's counsel, I do not find any sloppiness or negligence committed by the applicant in this application. As the records would show, he promptly took action after the dismissal of his Land appeal No 3 of 2018. He only spent 6 days to seek for and obtain the copy of the dismissal order and filed application No 28 of 2018. Again, he spent only five days to consult and present to the court a letter requesting for the copies of the ruling and thereafter only two days were consumed from the date he was supplied with the copy of

the ruling to the filing of this application. The delay, if any is not inordinate.

That said, the application is meritorious, the extension of time is hereby granted for the applicant to file Notice of appeal as well as an application for leave to appeal to the Court of appeal. The Notice of appeal should be filed within 7 days and an application for leave to appeal should be made within Fourteen (14) days from the date of this order. Costs to be in the course.

Order accordingly.

**DATED at SHINYANGA this 30<sup>th</sup> day of APRIL, 2021**



*E.Y. Mkwizu*  
**E.Y.MKWIZU**  
**JUDGE**

**30/04/2021**