

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**MISC. LAND APPLICATION NO.37 OF 2021**

(Arising from Land Appeal No. 25 of 2018 of the High court of  
Tanzania Mwanza)

**SIMON MACHABA MANGATE-----APPLICANT**

**VERSUS**

**SANKEY BONIFACE MWAKALOBO----- RESPONDENT**

**RULING**

*Last order: 19.07.2021*

*Ruling date: 30.07.2021*

**M.MNYUKWA, J.**

By a chamber summons made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019, the applicant applies for extension of time to file Notice of Appeal to the Court of Appeal and this court to grant leave to file appeal to the court of appeal against the decision of Land Appeal No 25 of 2018 delivered on 24<sup>th</sup> day of January, 2019. The applicant's application is supported by the affidavit deposed by Simon

Machaba Mongate, the same is opposed by the counter affidavit sworn in by Sankey Boniphace Mwakalobo.

The application was argued before me orally through audio teleconference where parties were remotely present on 19<sup>th</sup> July 2021 during which the applicant was represented by the learned advocate Manyota and the respondent appeared in person, unrepresented.

In his brief submission, Mr. Manyota pressed me to grant leave to file a notice of appeal out of time and appeal to the court of appeal against the decision of this court in respect of Land Appeal No. 25 of 2015 dated 24 January 2019 which was decided in favour of the respondent. He prays this court to adopt the applicant's affidavit.

He submitted that, the law requires the applicant to file a notice of appeal within 30 days, and from the date the decision was delivered to the date the application was filed, the applicant was out of time. He went on to submit that the reasons for delay is due to the fact that, the applicant is a blind person from 2018 and at a time when the appeal was heard and determined the applicant was blind and he was receiving medical treatment at Dodoma. He referred to the Medical Report attached to this application and prays this court to allow the application for the reasons that the applicant is a blind person.

On the other reason, the applicant learned advocate submitted that the parties in this application agreed the applicant to be given an alternative piece of land to end the conflict. Unfortunately, the applicant was not knowledgeable on the issue of the alternative piece of land. He went on that; the applicant is now well informed after having consultation with his lawyer. He, therefore, prays to be granted leave to file a notice of appeal out of time in order to meet the end of justice.

Responding to the application, Mr. Sankey prays this court to adopt the counter affidavit filed in this court on 5<sup>th</sup> July 2021 to form part of his submissions. He submitted that he opposes the applicant to be granted leave to file a notice of appeal out of time because from his affidavit at paragraph 4 he claimed to be blind from 2018 and that he was receiving medical treatment from different hospitals from that date. He added that, that allegation is not true because the medical report annexed shows that the applicant was receiving medical treatment from 2017 while in his submission the applicant's advocate stated that he was blind since 2018, in those circumstances, it is difficult to believe who is telling the truth between the applicant and his medical doctor.

Furthermore, the respondent submitted that, the District Land and Housing Tribunal delivered its decision on 09.02.2018 in presence of both parties and that the applicant filed his appeal before this court whose

decision was delivered on 24.01.2019 in the presence of both parties and that the applicant was well informed of the decision and his right of appeal. He insisted that, the applicant did not inform the court that he was blind and that he was receiving medical treatment at that time.

Referring to paragraph 5 of the applicant's affidavit, the respondent stated that the applicant failure to file a notice of appeal on time for the reason that he is blind cannot be proved. This is because the evidence does not show clearly which hospital the applicant was receiving treatment and for how many days, weeks or months the applicant was admitted to the hospital. The applicant also failed to show exactly dates that he attended to the hospital. He insisted that the applicant has not stated reasons for his delay worth to grant his application out of time.

Referring to paragraphs 7, 8, 9 and 10 of the applicant's affidavit, the respondent claims that the applicant gives reasons for his appeal and not the reasons for the delay and therefore prays this court to struck out the grounds of appeal. He retires insisting that, the law is settled that for the leave to file a notice of appeal out of time, the applicant must account for every day of delay and in fact the applicant did not do the same. He, therefore, prays this court to dismiss the application.

Re-joining, the applicants' learned advocate avers that the respondent has acknowledged that the applicant is sick and sickness is the ground for the extension of time, he prays this court to allow the applicant to file the application to appeal out of time. Insistingly, he added that since the respondent did not show that he will be affected if the application will be granted, he sees no reasons why this court should not grant the application.

I have given careful consideration to the arguments for and against the application herein advanced by the learned advocate for the applicant and the respondent respectively, the central issue for determination is *whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant.*

As it was cited in the chamber summons the applicant move this court through section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019. This is the provision of law that gives this court power to grant leave to appeal out of time if the time for making the application has already expired.

However, the appeal from the High Court to the Court of Appeal is governed by Rule 83 of the Court of Appeal Rules, 2019. While Rule 83(1) provides the manner of appeal, Rule 83(2) gives the time limit within which a person may file notice of appeal. The Rule provides that:

*'83(2) Every notice shall subject to the provisions of Rule 91 and 93 be so lodged within thirty days of the date of the decision against which it is desired to appeal."*

The above provision requires the applicant to file this application within thirty days from the date of the decision. In the case at hand the applicant delayed to file a notice of appeal within time which compels him to file the application to request this court to grant extension of time to file notice of appeal out of time.

The position of the law is settled that whenever there is application for extension of time the applicant will succeed upon showing good cause to justify why his application should be granted. It has to be noted that the good cause to warrant the extension of time is not provided for as it depends on the circumstance of each and every case.

As it was highlighted in the case of **Jacob Shija vs. M/S Regent Food & Drinks Limited and The Mwanza City Council**, Civil Application No 440/08 of 2017, CAT at Mwanza (unreported) among other things the court stated that:

*What amount to good cause cannot be laid by any hard and fast rule but are dependent upon the facts obtaining in each particular case. That is each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the*

*application for extension of time has been brought promptly, whether every day of delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant.”*

In the application at hand, I have gone through the applicant's learned advocate submissions and indeed revisited the applicant's affidavit specifically paragraph 5 where it is stated that the applicant failed to file a notice of appeal on time because immediately after the decision of this court on 24<sup>th</sup> January 2019, the applicant has severally attended eye clinic for a check-up and treatment and up to now he is still attending the same. I also find what is claimed by the applicant as a medical report attached to this application.

Again, I have had time to calculate the time which the applicant delayed to file this application in the sense that the decision was delivered by this court on 24.01.2019 and he was to file a notice of appeal to appeal to the court of appeal before or on 25.02.2019 that make a statutory time of 30 days. For the reason advanced by the applicant that he was sick and attending a clinic for check-ups and treatment, he knocks on the doors of this court and files this application on 17.04.2021 that makes a time of the delay to be approximately two (2) years and two (2) months.



In determination as to whether the applicant managed to move this court, the law is settled and clear that the applicant must with sufficient reasons, account for each day of delay that means that the applicant is required to account for each day of delay from 25.02.2019 when his statutory time ended to 17.04.2021 when he filed this application. This principle is reflected in the case of **Dar es Salaam City Council vs. Group Security CO. LTD, Civil Application No. 234 of 2015 CAT at Dar es Salaam**, where it was stated that: -

*"... the stance which this Court has consistently taken is that an application for extension of time, the applicant has to account for every day of the delay."*

In the present application, it is expected that the applicant could have account for each day of delay. As I stated earlier, the applicant delayed for two (2) years and two (2) months. On the other hand of the coin, even if he made last visit to hospital on 19/6/2019 as claimed in his medical report, the present application is also out of time for almost one (I) year and 10 months

The principle of accounting each day of delay has been also emphasized in the case of **Juma Shomari vs Kabwere Mambo**, Civil Application No. 330/17 of 2020 CAT at Dar es Salaam, where it was stated that: -



*"It is settled law that in an application for extension of time to do a certain act, the applicant should account for each day of delay and failure to do so would result in the dismissal of the application."*

This position has been pronounced in various decisions of the Court of Appeal, few of which are in the cases of; **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 (All unreported).

Basing on the principle above, it is my findings that the applicant did not account for each day of delay for the following reasons. First, I agree with the respondent that the decision was delivered in the presence of both parties and the applicant was well informed of his right to appeal. If at all he was at that time a blind, he could seek the legal assistance as what he is supposed to do before the expiration of the time to file an appeal.

Second, the applicant is relying on the medical report that the applicant undergo treatment from the time the decision was delivered, but on records, the medical report is a release report made on 19.06.2019 and from when the applicant was released from the medication and treatment, there is no an account on the period from 19.06.2019 when

the medical report was prepared to the date the applicant filed this application on 17.04.2021.

In respect to the alleged illegality, the applicant's states there are illegality as shown on paragraphs 6, 7, 8, 9 and 10 of his affidavit. I have gone through the said paragraphs and the impugned decision of this court, apparently on the face of the impugned decision I find nothing on the illegality to be challenged as alleged by the applicant.

It is a principle of law that the alleged illegality should be apparent on the face of it. In the case of **Ngao Godwin Losero vs Julius Mwarabu**, Civil Application No 10 of 2015, CAT at Arusha, the court when referring to the case of **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010, CAT stated that:

*"Applying the foregoing statement of principle to the case at hand, I am not persuaded that the alleged illegality is clearly apparent on the face of the impugned decision. Certainly, I will take long drawn process to decipher from the impugned decision the alleged misdirection or non-direction on point of law."*

Moreover, on the argument given by the applicant's advocate that the leave should be granted since the respondent did not show how will

be affected if the applicant's prayer will be granted, my reply to that argument is that, it is a principle in a justice system that litigation should come to an end and the successful party should have enjoyed the fruits of the award.

In the final analysis, I find that the applicant has failed to account for each day of delay and show a good cause upon which this Court can exercise its discretion to grant extension of time to file a notice of appeal and appeal to the court of appeal.

The application is thus devoid of merit and it is hereby dismissed.

No order as to costs.

  


**M.MNYUKWA**  
**JUDGE**  
30/07/2021

Ruling delivered on 30<sup>th</sup> day of July, 2021 via audio teleconference whereby all parties were remotely present.

  

**M.MNYUKWA**  
**JUDGE**  
30/07/2021