

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPLICATION NO. 26 OF 2021

(Arising from Land Appeal No. 21/2020 of the High Court of Kigoma, Emanating from the Judgment of the District Land and Housing Tribunal at Kigoma in Land Application No. 106/2015)

ASHA MATULIKE APPLICANT

VERSUS

ELIDADI ELIAS MATHAYO RESPONDENT

RULING

29/7/2021 & 27/8/2021

L.M. MLACHA, J.

This application is made under section 11(1) of the Appellate Jurisdiction Act Cap 141 R.E. 2021. It is an application for extension of time within which to file an application for leave to appeal to the court of appeal. It is supported by the affidavit of the applicant, Asha Matulike. The respondent, Elidadi Elias Matayo, filed a counter affidavit in opposition.

It was stated in paragraph 3 and 4 of the affidavit of the applicant that, the delay was caused by the existence of Miscellaneous Land Application No. 17 of 2021 filed by the applicant and later struck out by the court. It was not

by any negligence on her part. She referred the court to her points of law which she intends to present to the Court of Appeal. They are in paragraph 6 of the affidavit.

The respondent does not agree that the existence of the case is a valid reason for extending the time. That is contained in the counter affidavit sworn by his counsel Daniel Rumenyela. He also challenged paragraph 6 of the affidavit.

Mr. Silvester Sogomba and Daniel Rumenyela who appeared for their respective parties made oral submissions during the hearing. They made submissions in line with what is contained in their affidavits. Mr. Sogomba added that what made the application to be struck was a slip of the pen for instead of applying for leave he prayed for a certificate on point of law. Mr. Rumenyela had it that ignorance of law is no excuse. He referred the court to **Musa S. Msangi v. Anna Peter Mkomea**, CAT Civil Application No. 118/17/2019 on this aspect. Counsel could not see the relevance of showing the points of law as contained in paragraph 6 of the affidavit.

On my part, after examining the matter closely, I agree with counsel for the respondent that there was no need of showing the points of law in an application of this nature. What is needed in an application of this nature is

to account for each day of delay. To show that the delay was caused by reasons beyond the control of the applicant and that it extended through out the period under consideration. And if there were more than one cause, they should be shown clearly. The court will then, in its discretion, if satisfied, allow the application.

In this case it is not disputed that the parties were engaged in Miscellaneous Application No. 17 of 2021 which was struck out. It is also not disputed that the applicant acted promptly to file the present application. Miscellaneous Application No. 17/2021 was struck out on 30/4/2021 while the present application was lodged on 11/5/2021, just after 11 days. It is not a long period. If the applicant was in court in the period and acted quickly thereafter to lodge the present application, I think that he is nowhere to blame. The delay was caused by reasons beyond her control. The case of **Musa S. Msangi** (supra) was thus wrongly cited and is distinguishable.

With that in mind, the application is granted. The applicant is given 21 days within which to lodge his application. It is ordered so.

No order for costs



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L.M. Mlacha

Judge

27/8/2021

Court: Ruling delivered in the present of applicant in person and absence of the respondent. Right of Appeal explained.



A handwritten signature in blue ink, appearing to read "L.M. Mlacha", is written over a horizontal line.

L.M. Mlacha

Judge

27/8/2021