

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA
(APPELLATE JURISDICTION)
LAND DIVISION
MISC. LAND APPLICATION NO. 26 OF 2021

(Arising from the Order of the High Court of Tanzania at Kigoma by (Hon. A. Matuma, J.) dated 18th of October 2019 in Misc. Land Application No. 9 (A) of 2019)

ADROFU S/O FULGENSI MFUNYA..... APPLICANT

VERSUS

1. JUMA S/O HEREYE 2. SOSPITA S/O MPOMA 3. MBEZI AUCTION MART & CO. LTD	} RESPONDENT
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R U L I N G

14th & 14th September, 2021

A. MATUMA, J.

When this application came for hearing of the application for extention of time, the applicant was present in person and represented by advocate Dotto Banga. The 1st respondent was as well present in person with the service of advocate Eliuta Kiviyiro. The 2nd respondent was present in person unrepresented while the 3rd respondent was absent without any notice.

The applicant's advocate submitted that the delay was a technical one as they had their appeal to the Court of Appeal timely only that the same



was found incompetent and struck out. She thus prayed the application to be granted on the ground of technical delay citing before me the case of **Bank M (Tanzania) Limited versus Enoch Mwakyusa**, Civil Application No. 520/18 of 2017.

Mr. Eliuta Kivyiro learned advocate on his party opposed the application on two grounds; first that the applicant has not accounted for a period between the 2nd day of July, 2021 when the incompetent appeal was struck out and 16th July, 2021 when this application was filed. Two, that the order sought to be appealed is not appellable and thus extension of time cannot be granted on a matter which is not appellable.

The 2nd respondent on his party supported the learned advocate for the 1st respondent arguing that the matter between them ended by settlement. They freely executed the deed of settlement and why should there be an appeal against the settlement order.

In her rejoinder M/S Dotto Banga learned advocate conceded that indeed the order sought to be appealed is not appellable and that the applicant's affidavit has not accounted for a period of two weeks from when the appeal in the court of appeal was struck out and when he finally lodged this application.



Having heard the parties as herein above, I agree with them that the settlement order between the parties is not appellable and thus the extension of time would serve no useful purpose. It would open a way to dump untenable appeal before the Court of Appeal.

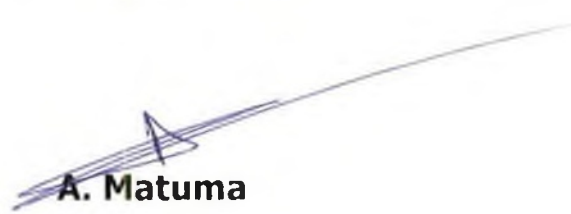
I join hands with Mr. Kiviyiro that extension of time can only be granted on tenable appeals before the Court of Appeal and not those which intends to consume the time of the court which would otherwise be used on issues of material importance.

Again, even if the order would be appellable, the applicant's advocate has conceded that they have not accounted for the period of delay between the date when their incompetent appeal was struck out and when they finally lodged this application.

In the circumstances I find this application to have been brought without sufficient cause. The same is dismissed with costs.

It is so ordered.




A. Matuma

Judge

14/09/2021

Court: Ruling delivered on this 14th day of September, 2021 in the presence of Applicant in person and represented by M/S Dotto Banga learned Advocate, and the 1st Respondent in person and represented by Mr. Eliuta Kiviyiro learned Advocate, the 2nd Respondent in person and in the absence of the 3rd Respondent.

Sgd: A. Matuma

Judge

14/09/2021