

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT TABORA**

MISCELLANEOUS LAND CASE APPLICATION NO. 34 OF 2020

*(Arising from Land Appeal No. 14, 17/2019 High Court Tabora and
Original Land Application No. 5/2018 Tabora District Land and
Housing Tribunal)*

FURAHA DENIS PASHU -----APPLICANT

VERSUS

JAMES BERNADO NTAMBALA ----- RESPONDENT

RULING

Date: 17/09/2021& 24/09/2021

BAHATI, J.:

The applicant herein named Furaha Denis Pashu under the legal service of Mr. Musa Kassim pursued this Court seeking for the orders that: -

- 1. That, this court be pleased to extend the time to the applicant to apply out of time for leave to appeal to the Court of Appeal against the decision of the High Court in Land Appeal No. 14, 17 High Court Tabora.*
- 2. That, subject to the grant of extension of time sought under item No. 1 above, this Court be pleased to grant the applicant leave to appeal to the Court of Appeal of Tanzania against the*

decision of the High Court in Land Appeal No. 14, 17 High Court at Tabora.

3. That, Cost of this application be provided for.

4. That, this honourable court be pleased to grant any other relief(s) it deems fit to grant.

This application comes under section 11(1) of the Appellate Jurisdiction Act, Cap.141 [R.E 2019], Section 47(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019], Rule 46(1) of the Tanzania Court of Appeal Rules, 2009. The application is supported by an affidavit duly sworn by Mr. Musa Kassim learned counsel representing the applicant. In response to the application, the respondent James Bernardo Ntambala filed a duly deponed counter affidavit.

The application was disposed of by way of written submissions. Submitting in support of the application Mr. Kassim stated that an appeal to the Court of Appeal of Tanzania that originates from the District Land and Housing Tribunal passes two important stages and that is filing a notice of appeal to the Court of Appeal and obtaining leave to appeal from the High Court.

Mr. Kassim submitted further that, the applicant's former notice of appeal to the court of appeal was struck out on 05/12/2019 by the Court of Appeal hence re-application for a new Notice of Appeal, the same was granted on 10/07/2020 by Hon. Amour, J, immediately after receiving ruling and drawn order the applicant promptly filed

this application seeking extension of time and leave to appeal to the court of appeal.

He added that upon being granted an extension of time to lodge a notice of appeal and thereby lodging the same to the Court of Appeal it is when the time to apply for leave to appeal accrued to the applicant. Further that, the promptness of filling the application at hand is a good ground for extension of time. He cited the case of **Madore vs Mepukori Mbelekeni and Another**, Civil Application No. 13/2016 CAT at Arusha (Unreported) where the court stated that,

"But, evidently, the applicant filed Notice of Motion promptly in the wake of refusal by the High Court and in any event, I do not think that the respondents will be prejudiced anyhow if the application is granted"

As to illegalities, Mr. Musa alleges that there are illegalities to which the impugned judgment, decree, and proceedings are tainted with to wit:-

- (i) *That, since the assessor's opinion, were not read to the parties in the tribunal before the judgment could be imposed then the proceedings of the trial tribunal and judgment thereof and the subsequent consolidated Land Appeal No. 14&17/2010 to the Court are nullity proceedings and judgment.*
- (ii) *That, the learned judge erred in law to proceed hearing of Land Appeal No. 17/2010 in absence of any notice to Miraj*

Shabani Kasagula (1st Respondent in Land Appeal No. 17/2010) since the institution of the said Appeal before the High Court.

(iii) That, the learned Judge erred in law and fact to allow the respondent's Land Appeal No. 17/2010 based on documentary evidence which was not admitted by the trial tribunal.

Mr. Kassim further stated that the basis of the above illegalities and or irregularities suffices to extend the time to the applicant to allow the illegalities so listed to be considered and determined by the Court of Appeal of Tanzania to make the record of the Court clear.

Subsequent to grant of leave the applicant's other prayer is the grant of leave to appeal and the proposed grounds for the intended appeal are the same as submitted in the prayer for extension of time.

With the combination of two prayers in one application; while citing the case of **MIC Tanzania Limited vs Minister for Labour and Youth Development and Another**, Civil Appeal No. 103/2004 CAT at Dar es Salaam (Unreported) He submitted that the Court encourages the combination of prayers instead of a multiplicity of applications.

Responding to Mr. Musa's submission, the respondent contested the application by stating that, for the Court to grant an extension of time the applicant must show good cause and among other things, a good cause could be accounting for each day of the delay.

On the issue of the combination of two prayers in one application the respondent submitted that the same is prohibited especially where the law applicable is not the same. For example, while the first prayer is brought under the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] the second prayer is brought under the Land Disputes Courts Act, Cap.216 [R.E 2019] therefore it was improper to combine the two prayers in one application. The applicant cited the case of **Jovin Mtagwaba & 85 Others vs Geita Gold Mining Limited**, Civil Appeal No. 23/2014, CAT at Mwanza (Unreported) where the Court of Appeal explained that: -

“As we remarked earlier, it was irregular and improper for the High Court to mix up prayers catered under different laws in one application.”

Also as to the insertion of Court of Appeal Rules, 2009 as enabling law the respondent cited the case of **Siri Nassir Hussein Siri vs Rashid Musa Mchomba**, Civil Application No. 23/2014, CAT at Arusha (Unreported) where the court stated that: -

“All said and done, we are increasing of the view that the court of Appeal Rules, 2009 does not provide for filing of the omnibus application. For that reason, we are constrained to uphold the preliminary objection and strike out this omnibus application as we hereby do.”

On the ground of illegality the respondent cited the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of**

Young Women Christian Association of Tanzania, Civil Application No. 2/2010 where the court stated that: -

"Since every party intending to appeal seeks to challenge a decision either in points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time if he applies one. The court there emphasized that such points of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

The respondent added that the points so raised are mere grounds of appeal not capable of warranting an order of extension of time. Further, the applicant did not account for each day of delay from 24/02/2016 when the judgment of the trial tribunal was delivered up to 20/10/2016.

In conclusion, the respondent submitted that since other factors raised by the applicant have already been concurrently decided by the two lower courts the court of appeal cannot interfere with the concurrent findings of the lower courts unless there is misdirection or non-direction on evidence and from the reading of the applicant's

application, he sees no any allegation or misdirection. The respondent prayed the application be dismissed with cost.

In a brief rejoinder Mr. Kassim submitted that the respondent misapprehended the cited Jovin's case (supra), in that case, the appellant sought leave of appeal to the Court of Appeal under section 11(1) of the Appellate Jurisdiction Act, Cap.141 instead of section 47(1) of the Land Disputes Courts Act, Cap.216 as the matter originated from the District Land and Housing Tribunal that is why the court of appeal found it improper and incapable of supporting the appeal.

Having considered the parties' submissions, the chamber summons and supporting affidavits the issues to be considered are whether or not the applicant has shown good cause to justify the extension of time sought and subsequent to that grant of leave to appeal to the court of appeal of Tanzania.

To answer on the first prayer as to whether the applicant has assigned sufficient ground for extension of time, the answer is yes; the record of this case shows that the applicant has been in court corridors pursuing multiple cases on different occasions but somewhere ended up being struck out for reasons that were beyond the control of the applicant; to mention few the record shows that in on instant the applicant was supplied with improper court file documents which rendered his appeal to the court of appeal to be struck out.

I am mindful of the stance held by the court in **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil application No. 3 of 2017 (Unreported) that delay of even a single day has to be accounted for. However, the circumstances of the current application are different as the applicant was not idle but all along has been in court corridors tirelessly pursuing the intended appeal. Therefore, I am satisfied that the applicant has been able to show good cause warranting an extension of time and I grant it as prayed.

As to the issue of enabling law as it was challenged by the respondent, I think I should not spare much time discussing it. The law is quite clear that, where an applicant omits to cite any specific provision but jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the overriding objective principle may apply.

On the second prayer on leave to appeal to the court of appeal, Mr. Kassim deponed at paragraphs 3 and 8 of his affidavits that the applicant was once granted leave to appeal to the Court of appeal but they were supplied improper record of appeal the factor that contributed to the striking out of notice of appeal. Since in the first application the applicant satisfied this court that there are triable grounds by the Court of appeal to warrant the grant of leave to appeal, I think this court should not detain him that allows him to pursue his appeal. On this ground, leave is accordingly granted. The

applicant is at liberty to file the intended appeal in accordance with the law.

Order accordingly.



A.A BAHATI

JUDGE

24/09/2021



Date: 24/09/2021

Coram: Hon. N. Mwakatobe, DR

Applicant: Gahise, Advocate hold brief Khamis, Advocate.

Respondent: Present.

B/C Grace Mkemwa, RMA

Court: Ruling is delivered this 24th day of September, 2021 in the presence of Gahise Advocate holding brief for Mussa Khasim Advocate for applicant and Respondent in person.


N. MWAKATOBÉ

DEPUTY REGISTRAR

24/9/2021

Right to appeal is explained.


N. MWAKATOBÉ

DEPUTY REGISTRAR

24/9/2021

