

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT TANGA**

**MISC. LAND APPLICATION NO. 1 OF 2021**

(Arising from the Ruling of the High Court of Tanzania at Tanga  
in Misc. Land Application No. 26 of 2019)

**HATIBU MOHAMED MSWAHILI.....APPLICANT**

**VERSUS**

**MKUDURU RAMADHANI.....RESPONDENT**

**RULING**

**MKASIMONGWA, J**

This is an application for extension of time within which to file an application for leave to appeal to the Court of Appeal. The Application was by way of Chamber summons filed under Section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] supported by an affidavit of the counsel for the Applicant one Mr. Godfrey Samwel. In response to the Application, Mr. Stephene Leon Sangawe, the Counsel for the Respondent, filed a Counter Affidavit contesting it.

On the 5<sup>th</sup> Day of August 2021 when the Application was set for hearing, the Applicant's counsel submitted that the instant Application was filed a day before expiration of time in which to file an application for leave to Appeal to the Court of Appeal. This was due to the fact that the Applicant was not timely availed with the copy of the contested

ruling as the same was supplied to them on 18/02/2021. The counsel further stated that in an application for extension of time, the Applicant must show a sufficient cause and account for the days of delay. He submitted that since, in the case at hand there were no days of delay then the application should be granted.

In his reply, Mr Sangawe was of the view that this application was filed under presumption that the Applicant was late in pursuing an application for leave and that there is no law that allows applications of this nature. He added that in terms of Rule 45 (a) of the Court of Appeal Rules an Application for leave to appeal to the Court of Appeal can either be applied informally at the time when the decision or order the subject of the intended appeal is delivered or by filing a Chamber Summons as per the practice of the High Court. He argued that on the date the contested ruling was delivered, the learned counsel for the Applicant was present and did not informally apply for the leave. Instead he opted to file a Chamber Summons on the presumption that he will not be timely supplied with the copy of the ruling.

Mr. Sangawe further stated that in an application for leave, there is no a mandatory requirement under the law that the same be accompanied with the copy of the contested ruling. He further argued

that even if it were so, the Affidavit in support of the Application does not state when the ruling was ready for collection. The deponent did not either counter to the averments in the Counter Affidavit which were to the effect that the ruling was ready for collection a long time ago.

As regards to the application it was also Mr. Sangawe's submission that the Court may exercise its discretionary powers to extend time limited by rules where there is sufficient and good cause for the delay established. He argued that in the filed affidavit the Applicant did not exhibit a sufficient and good cause save for an averment that they applied for the copy of ruling. The counsel concluded by submitting that the Applicant ought to have filed the Application for leave in thirty (30) days of the contested decision. He did not, however, file the Application within the time prescribed by the law and that he did not account for each day of delay. Mr. Sangawe referred the Court to a decision in the case of **FINCA (T) LTD and Another vs Boniface Mwalukisa: Civil Application No. 589 of 12 of 2018 CAT at Iringa** which expounded on the necessary principles to be considered in this like Application. The counsel prayed that the application be dismissed since there were no reasons advanced to justify the delay.



In his rejoinder, the Applicant's counsel conceded to the fact that the Application was based on presumption as it was filed a day before expiration of time in which to file an Application for leave. He further submitted that he had indicated in his affidavit a sufficient cause for the delay as per paragraph five (5) of the Affidavit, that he was not timely availed with a copy of the contested decision. The learned counsel further submitted that indeed, there is no law that requires that the Application for extension of time be accompanied by the copy of the contested decision. However that has been a practice. He also conceded that he did not apply for leave informally but since he filed a formal application, it was necessary that they obtain the copy of the decision. He also submitted that the cited case of **FINCA (supra)** is distinguishable from the instant one because in that case there was a delay of 14 days whereas this matter was filed a day before the expiry of the limited time. It was therefore his submission that since it is within the discretion of the Court to grant extension of time, the circumstances in the case suffice the Court to grant the order sought and therefore the Respondent's argument be dismissed and the Application be granted with costs.

I have attentively considered the submissions as well as the record. It is a trite law that it is entirely in the discretion of the Court when it comes to granting of the Application for extension of time. In deciding how to exercise the discretion to extend time the case of **Mbogo vs Shah [1968] EA** is of assistance. There it was held that;

*All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there was an arguable case on the appeal and the degree of prejudice to the defendant if time is extended.*

In the matter at hand, the Applicant submitted that the Application was filed a day before the expiration of the time prescribed under the law. The Applicant's reason that he advanced was that he was not timely supplied with the copy of the contested decision. On the other hand, the counsel for the Respondent argued that the ruling was ready for collection a long time ago and that in any way it was not necessary that the copy is obtained for him to apply for leave.

It is evident that this application at hand was under Section 11 (1) of the Appellate Jurisdiction Act [Chapter 141 R.E. 2019] where it is sated that;

*"Subject to subsection (2), the High Court or where an appeal lies from a subordinate court exercising extended powers, the subordinate exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."*

A thorough reading of the provision guides me to a finding that an application for extension of time can be made despite or regardless of whether the time for giving the notice to appeal or the time for making an application for leave has already expired. Regarding to Rule 45 (a) of the Court of Appeal Rules as referred by the counsel for the Respondent, the provision is about application for leave to appeal in civil matters. Under the rule, an application for leave to appeal to the Court of Appeal may be made formally or informally. It is apparent that the Applicant opted to present his Application formally in which as he rightly did a Chamber Summons supported by affidavit should be file. The affidavit has to state the sufficient and good cause for delay. Here is averred that the applicant was not timely availed with the copy of the contested decision. Mr. Samwel admits that the copy was not the necessary



requirement in the application. It is however a practice to accompany the copy with the application. This argument that practice requires it that in an application for extension of time in which to file an application for leave to appeal to the Court of Appeal must be accompanied by the contested decision was not cemented by any case law. In my view since it is not a requirement of the law to attach the copy of the challenged decision in an application for extension of time in which to lodge an application for leave to appeal, delay to be supplied with the copy does not constitute a sufficient or good cause guarantying the court grant the extension.

From the above analysis, since the Applicant has not established a sufficient cause for the delay the application is not successful. The same is hereby dismissed with costs

**DATED** at **TANGA** this 7<sup>th</sup> day of September, 2021



  
E. J. Mkasimongwa  
**JUDGE**  
**07/09/2021**