

- ORIGINAL -

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

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 4 OF 2020**

*(C/f Land Appeal No. 24/2018 Originated from Application No. 33 of 2014 Before  
the District Land and Housing Tribunal of Arusha at Arusha)*

**WILSON SIRIKWA ..... APPLICANT**

***Versus***

**MIKAEL MOLLEL ..... RESPONDENT**

**RULING**

14<sup>TH</sup> July & 17<sup>th</sup> September 2021

**MZUNA, J.:**

This is an application by **Wilson Sirikwa**, the applicant herein, seeking for extension of time to apply for leave to appeal to the court of Appeal of Tanzania out of time against the decision of the High Court in Land Appeal No. 24/2018. The application is supported by an affidavit sworn by Philip Mushi, the learned counsel for the applicant. It is strongly opposed by **Mikael Mollel**, the respondent herein, through a counter affidavit deposed by the respondent himself.

It was agreed between parties that hearing of this application be by way of written submission. Both parties complied with the agreed schedule and did file same. During hearing of the application, the applicant was represented by Mr.

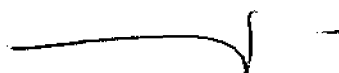


John Materu whereas the respondent was represented by Mr. Lobulu Osujaki, both learned counsels.

The background story is that, the applicant was a successful party in the District Land and Housing Tribunal of Arusha in Application No. 33/2014 as opposed to the respondent. The latter filed an appeal in this court vides Land Appeal No. 24/2018. He won in a judgment delivered on 15/07/2019. In his attempt to challenge the said decision to the Court of Appeal, the applicant found himself time barred hence this application.

The main issue for determination is whether there are sufficient reasons shown for the delay. Submitting on the substance of the application, Mr. Materu submitted that, the applicant being aggrieved by the decision of the High Court he applied for copies of decree, exhibits, judgment and proceeding on 24<sup>th</sup> July 2019 and filed a notice of Appeal to the Court of Appeal on 25<sup>th</sup> July 2019.

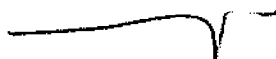
After the applicant applied for those documents to the Deputy Registrar via a letter he submitted that the same was not responded and on 7<sup>th</sup> September 2019 Mr. Philip Mushi being the advocate for the applicant by then, decided to make a physical follow up to the High Court registry. He found that the said documents had already been issued to Advocate Kinabo who represented the applicant in the said Appeal.



Since the applicant was already time barred, he filed a Civil Application No 87/2019 seeking extension of time to file application for leave to appeal to the Court of Appeal and on 25<sup>th</sup> November 2019 that application was struck out for being filed as a Miscellaneous Civil Application instead of a Miscellaneous Land Application.

Mr Materu, the learned counsel attributed the reasons for the delay in filing the application for leave being failure of the registry office to inform the applicant's counsel that the documents were ready for collection and cited Rule 90 (5) of the Court of Appeal Rules, 2009. He cited the case of **Simon Nchagwa v. Majaliwa Bande & Another**, Civil Application No. 205/01 of 2017 (unreported) and moved this court to find that the delay was caused by the office of the Deputy Registrar.

Another reason, according to Mr. Materu is on a point of illegality of the decision of the High Court in Land Appeal No. 24/2018. He alleges that in Application No.33/2014 the respondent did not institute the claim as an administrator but rather under his own name and later there occurred another misjoinder of necessary parties. Another illegality was the failure of the trial chairperson to require the assessors to give their opinion and cited the case of **Edina Adam Kibona v Absolom Swebe (Sheli)**, Civil Appeal No. 286/2017 (unreported).



Lastly Mr. Materu moved this court to consider that where there is illegality then it is a good cause for extension of time and holding otherwise would bless an illegal decision to stand. He prayed for this application be granted with costs.

In response, Mr. Lobulu argued based on two points, first that there exist no genuine reasons for extension of time and second that there are illegalities to warrant such application.

Mr. Lobulu stated that the reason for extension of time as stated by the applicant under paragraph 9 of the sworn affidavit, that being no response from the office of the Deputy Registrar and attacked the applicant that he waited almost 40 days up to 7<sup>th</sup> September 2019 just to make physical follow up and discover that applicants previous advocate had been issued with those documents.

He condemned that the confusion in supplying copies of documents can not be shouldered on the office of the Deputy Registrar since Advocate Kinabo has received the said documents on 18<sup>th</sup> July 2029 that being two days after the judgment was delivered.

He referred to the case of **Simon Nchagwa v Majaliwa Bande & Another** (supra) and stated that the said case is inapplicable in the present case for reason that, in that case they were dealing with defective certification by the office of the Deputy Registrar as the reason for delay while in this case the advocate shifts the reason for the delay to the Deputy Registrar.

Mr Lobulu moved this court to seek guidance from the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women Christian Association**, Civil Application No. 2 of 2010 (CA) (unreported) where the court formulated some guidelines pertaining to grant of extension of time including to account for the delay. That the time spent in the institution of the first application (that is from 18<sup>th</sup> July 2019 when the proceedings and judgment were issued to him up to 9<sup>th</sup> September when the first application was filed), shows the reasons advanced by the applicant is unconvincing. It amounts to apathy and sloppiness.

He says, the applicant having the first application struck out was given an order to refile the same within 7 days but the applicant further delayed for 35 days without even accounting the reasons for such delay and the pleaded illegality of the decision of the High Court.

As for the alleged illegality, he says, the same cannot be seen on the face of record as the law requires. In fact, Mr. Lobulu challenges the move of introducing new facts which were not deponed in the affidavit and moved this court by citing the case of **Registered Trustees of Dar es Salaam v The Chairman of Bunju Village Government and 4 Others**, Civil Appeal NO. 127/2006 (CA) (unreported). That, submissions are explanation of evidence already tendered and that they are not intended to be a substitute for evidence.

He further cited the case of **Finca (T) Ltd and Another v. Boniface Mwalukasa**, Civil Application No. 589/12 of 2018 (CA) (unreported). He argued that the illegalities stated on the affidavit is that relating to administrator of estate and the same does not appear on record of either the trial court or the appellate court and the same not being raised in the two courts below, the issue of non-joinder of necessary party he argued that it was curable under Order 1 rule 9 of the Civil Procedure Code [Cap 33 R E 2019]. The respondent prayed that the said application be dismissed with costs.

In rejoinder the applicant further stated that the delay caused by the Deputy Registrar amounts to a good reason for grant of extension of time, and stated that they acted diligently by filling a notice of appeal and there after lodging Miscellaneous Application No. 87/2019. That the 35 day are accounted for. He cited the case of **Royal Insurance Tanzania Ltd v Kiwenge Strand Hotel Ltd**, Civil Application No. 111 of 2008 (unreported) and the case of **Ai Outdoor Tanzanian Ltd & another V Alliance media Tanzania Ltd**, Civil Application NO 18 of 2008 (unreported). He insisted that the illegalities are on face of record and that are valid reasons for the grant of extension of time by this court.


In this application, the question to ask is whether there are sufficient reasons advanced by the applicant to grant the order sought, that is the grant of extension of time to the applicant to apply for leave to appeal to the Court of



Appeal. I am aware, as a matter of general principle whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But that discretion is judicial and so it must be exercised according to the rules of reason and justice. It was held in the case of **Wambele Mtumwa Shahame v. Mohammed Hamis**, Civil Reference No. 8 of 2010, CAT at Dar es Salaam (unreported) at pp 5 to 6 that, *"there are no hard and fast rules as to what constitutes a good and a sufficient cause it is always a question of fact to be determined by the court according to the circumstance of each case"*.

The decision of the court intended to be challenged that is Land Appeal No 24/2018 was delivered on 16<sup>th</sup> July 2019. Then glancing from the submission from both sides the applicant stated that on 24<sup>th</sup> July 2019 he wrote a letter to the Deputy Registrar as per annexure P1 requesting for the copies of certified decree, exhibits, judgment and proceedings, as per annexure P2,

On 25<sup>th</sup> July 2019 the applicant lodged a notice of intention to appeal, on 7<sup>th</sup> September 2019 the applicant made a physical follow up to the registry office, on 9<sup>th</sup> September 2019 the applicant made the first application for extension of time that is Misc. Civil Application No. 87/2019, and the said application was struck out on 25<sup>th</sup> November 2019 with leave to refile the same within 7 days. It is not disputed that the present application was filed on 9<sup>th</sup> January 2020.



The reasons for extension of time have been stated by the applicant under paragraph 12 and 13 of the applicant's affidavit and quoted hereunder as follows:

*12. That the delay to file an application for leave is not occasioned by neither the deponent herein nor the applicant's fault but rather the miscommunication from the registry office which was required to inform the office of the deponent that the copies had already been previously supplied to counsel Kinabo.*

*13. That, there are serious illegality issued in High Court decision which needs to be addressed by the Court of Appeal amongst many being the act of the trial judge to declare the respondent the lawful owner of the Suitland in circumstance where there is no letter of administration which entitled the respondent to the ownership of the Suitland while his claim of ownership vests from inheritance.*

This application has been filed under section 11(1) of the Appellate Jurisdiction Act (Cap 141 R. E 2019). The applicant is seeking for extension of time to apply for leave to appeal out of time. The question to ask is, has he disclosed good cause for the delay?

Reasons justifying extension of time are well stated in the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (supra) like;

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*



- (c) *The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

Coming to the first reason for the extension of time being miscommunication, Mr Materu urged this court to consider that, it is the fault of the Deputy Registrar not to respond to the applicant's letter only after making a physical follow up to find that the requested copies were already issued to the advocate Kinabo who was representing the applicant in Land Application No 24/2018.

Glancing from the affidavit and submission of the applicant he submitted that the advocate who represented the applicant in Land Appeal No. 24/2018 that is Mr. Kinabo had already been issued with the copies of proceedings, judgment and decree on 18<sup>th</sup> July 2019 that being two days from the date the judgment was pronounced.

Mindful of the fact that the case belongs to the client and not an advocate, the applicant was or ought to have been aware that the advocate representing his rights at this court was issued with the relevant documents on time. The alleged miscommunication between the office of the Deputy Registrar and or that there was need to notify the applicant's current advocate, in my view, is devoid of merit.



The applicant was well represented on the date the judgment was pronounced through his advocate Mr. Kinabo who had received the copies of the judgment and proceeding just two days after the judgment being pronounced. For that reason, the cited case of **Simon Nchagwa v Majaliwa Bande** (supra) with due respect, is distinguishable to the case under consideration.

If the court excludes the days that the applicant was not aware of the fact that his former advocate was issued with the copies of judgment, decree and proceedings as well as excluding the days which the applicant has failed to account on each date from 25/11/2019 when the application was struck out to 09/01/2020 when the current application was preferred, there is an unexplained delay of almost 45 days. That is after the date the leave was granted to refile the same application to this court within 7days from 25/11/2019. The applicant did not account on each day for the delay for those 45 days those as per the case of **Lyamuya** (supra). The delay is inordinate.

It was held in the case of **Bushiri Hassan v. Latifa Lukio Mshana**, Civil Application No. 3/2007 (unreported) that:-

*"...delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps has to be taken"*



The applicant however claimed that, the other reason for extension of time was illegality of the decision of the High Court. The illegality being non-joinder of parties, *locus standi* and that the opinion of the assessors was not considered. All these alleged illegalities, as well argued by the learned counsel for the respondent, were not stated in the applicants' affidavit. The only alleged illegality is from paragraph 13 of the applicant's affidavit which concerned lack of letters of administration by the respondent which he termed it as *lack of locus stand*. The alleged illegality has to be clearly apparent on the face of the impugned decision. In any case that is a point subject for determination in the intended leave and therefore not subject for determination by this court which is dealing with the issue whether there are reasons for extension of time to file leave to appeal to the Court of Appeal. It was therefore made out of context.

The alleged illegality is not apparent as it was held in the case of **Samwel Munsiro v Chacha Mwikwabe**, Civil Application No.539/08 of 2019 CA at Mwanza (unreported) at page 7 that:-

*"As often stressed by the court, for this ground to stand the illegality of the decision subject of the challenge must be clearly visible on the face of record and the illegality in focus must be that of sufficient importance."*

The applicant stayed idle for almost 45 days which had not been accounted for after he had obtained leave to refile the application within 7 days after the

Misc. Civil Application No. 87/2019 was struck out on 25<sup>th</sup> November 2019. No series of explanation has been brought to the fore in respect of the delay.

For the reasons above stated, the applicant has failed to show sufficient reasons for the delay. I desist from granting extension of time to apply for leave to appeal to the Court of Appeal.

This application stands dismissed with costs.

Order accordingly.



  
**M. G. MZUNA,**  
**JUDGE.**

**17<sup>th</sup> SEPTEMBER, 2021**