

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO 72 OF 2021

(Arising from Appeal No. 40 of 2020 High Court of Tanzania Musoma District Registry at Musoma (Hon E. S. Kisanya, J) and from decision of the District Land and Housing Tribunal for Mara in Misc. Land Application No 756 of 2019)

ROCKET MAHEGA APPLICANT

VERSUS

MSAFIRI MISIGITANI MSEMBA 1ST RESPONDENT

NYABANANE MWIKWAB MAHERI 2ND RESPONDENT

MWAJUMA MAGANYA 3RD RESPONDENT

EMMANUEL MAGESA 4TH RESPONDENT

RULING

11th November and 15th November, 2021

F.H. MAHIMBALI, J.:

By way of chamber summons brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141, R.E 2019 and section 47 (1) and (3) of the Land Disputes Act, Cap 216, R.E 2019 supported with the affidavit of the applicant, the application has been filed praying for the following orders:

- 1) Extension of time for filing notice of appeal out of time as per this Court's judgment dated 14th August, 2020 (Kisanya, J in Land Appeal no. 40 of 2020).
- 2) Certification on point of law (if prayer in ground no.1 is granted)
- 3) Costs of this application
- 4) Any other relief this honourable court is deemed just to grant.

This application is supported by the affidavit of the applicant Rocket Mahega. The main reason in the applicant's affidavit for the prayer of extension of time are contained in paragraphs 2- 10 in which the applicant depones that following the verdict of the High Court (Kisanya, J, dated 14th August, 2020 in Land Appeal no. 40 of 2020) which confirmed the decision of the DLHT of Mara at Musoma the applicant through Application no. 62 of 2020 timely filed an application for leave to appeal to Court of Appeal. Unfortunately, this application was struck out for being incompetent. That immediately thereafter, the applicant filed Misc. Application no. 81 of 2020, and prayed to this court to certify that there is a point of law, the application was struck out for want of notice of appeal to the Court of Appeal. That the delay of filing the

appropriate applications was occasioned by the applicant prosecuting Misc. Land Applications nos. 62 of 2020 and 81 of 2020.

During the hearing of this application, both parties were dully represented. Whereas the applicant enjoyed the legal services of Mr. Mahemba learned advocate, the respondent fully enjoyed the legal services of Mr. John Manyama, also learned advocate.

Arguing in support of the application, Mr. Mahemba who first prayed for the applicant's affidavit be adopted to form part of the applicant's submission argued that there is no any negligence on the part of the applicant in delaying to file this application. He thus prayed that this application be granted as prayed.

Countering the application, Mr. Manyama similarly first prayed that contents of the counter affidavit be adopted to form part of the respondents' submission. He added that as per paragraphs 9 and 10 of the applicant's affidavit, there are no reasonable grounds stated for this application to be granted. There has been no clear accounting of time in explaining the said delay. What is stated in paragraph 10 (a) – (c) are not reasons for the grant of extension of time to CAT. He thus prayed that the application be dismissed with costs.

In his rejoinder submission, Mr. Mahemba learned counsel for the applicant while reiterating his submission in chief, submitted that there is no any negligence on the part of the Applicant. Considering that right to appeal is constitutionally guaranteed, he insisted that the application be granted.

Having heard the submission of both parties' counsel for and against this application, the issue for determination by this court now is whether this application is meritorious to grant. Guided by the minimal guidelines set by the Court of Appeal in the case of **Ngao Godwin Losero Civil Application No. 10 of 2015** making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (*Civil Application No. 2/2010 – unreported*) the Court of Appeal reiterated the following guidelines for the grant of extension of time.

- 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 is intending to take.*

d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties through their respective counsel. For sure I am mindful that to refuse or grant this application is the court's discretion. However, to do so there must be accounted reasons for that. The law is settled that extension of time is not an absolute right but it is upon judicial discretion and the applicant has to show "*good and reasonable cause*". This was held in the case of **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED** [2006] TLR 235 at page 235 where the Court of Appeal states;

(i)...the court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the Applicant, there ought to be some kind of explanation or material upon which the court may exercise the discretion given."

It is settled position of the law that what amount to sufficient cause is not yet defined. See **TANGA CEMENT COMPANY LIMITED VS MASANGA AND AMOS A. MWALWANDA** , Civil Application No.6 of 2001 where it held;

"What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly , the absence of any valid explanation for delay , lack of diligence on the part of the applicant."

The main reasons deponed by the applicant is that the delay of filing the appropriate applications was occasioned by the applicant prosecuting Misc. Land Applications nos. 62 of 2020 and 81 of 2020. The applicant's negligence, apathy or sloppiness in the prosecution of the action that he is intending to take has never been considered as a good cause for the granting extension of time. Not taking a proper legal course timely either by negligence or by ignorance of the law has never been a good ground for extension of time.

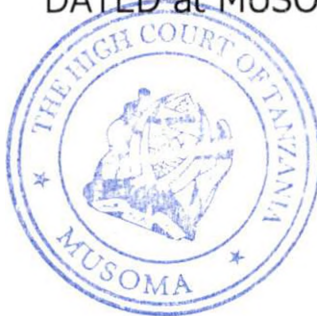
In this application, the reason why this application should be granted is mainly premised on trivial ground of ignorance of the law. this has been held times out of number, that ignorance of law has never featured as a good cause for extension of time (see **Ngao Godwin Losero – supra**). In this case it was held that, a party who is not properly seized of the applicable procedure will always ask to be appraised of it, for otherwise he/she will have nothing to offer as an excuse for sloppiness.

All said and done, what has been deponed by the applicant and argued by the applicant's counsel is legally speaking nothing but exhibiting the party's apathy, negligence and sloppiness in which I am not in a position to condone any.

In the end result, the application is dismissed with costs for being devoid of any merit.

It is so ordered.

DATED at MUSOMA this 15th day of November, 2021.



F. H. Mahimbali

JUDGE

15/11/2021

Court: Ruling delivered this 15th day of November, 2021 in the presence of the appellant, 2nd and 3rd respondents and Mr. Gidion Mugo – RMA.

F. H. Mahimbali

JUDGE

15/11/2021