

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

MISC. CIVIL APPLICATION NO. 26 OF 2020

*(Original from Pc Civil Appeal No. 10/2020 of the High Court of Tanzania at Dodoma,
Dodoma District Court in Civil Appeal No. 3/2019 and Civil Case No. 164/2019 of
Chamwino Mjini Primary Court)*

HUSSEIN JUMA APPLICANT

VERSUS

FAROUK MOHAMEDRESPONDENT

RULING

02/11/2021 & 9/11/2021

KAGOMBA, J

This application for extension of time to file notice to appeal and for leave to appeal to the Court of Appeal has been filed by HUSSEIN JUMA (The "Applicant") under section 5 (4) (a), 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019]. The Application is supported by affidavit of the Applicant who also prays for costs and any other order this court may deem just to grant. The Respondent is FAROUK MOHAMED.

According to the supporting affidavit of the Applicant, the Applicant lost his appeal at the District Court of Dodoma at Dodoma on 9/10/2019. He was dissatisfied with the decision of the District Court and immediately appealed within time to this Court through PC Civil Appeal No. 10 of 2020 whose decision was delivered on 11/08/2020. He was supplied with a copy of the said judgment on 10/9/2020 which was only one day to the end of limitation

time for filing a Notice of Appeal, that is 30 days from the date the judgment was delivered.

According to the Applicant 's affidavit, which was also the submission of his advocate Mr. Mselingwa during the hearing of the application, a delay of 18 days ensued for a reason that during that time the Applicant was seeking legal advice. The time lapse was also attributed to the drafting of legal documents for filing to this Court.

The Applicant stated in his affidavit that if the orders sought to extend time to file his appeal and for leave to appeal to the Court of Appeal will not be granted it will be injurious to him and his family who are solely depending on the house in quo for living. His advocate told this Court that the delay was not caused by negligence on part of the Applicant. Based on the ground stated in the supporting affidavit and submitted during hearing, Mr. Mselingwa, prayed the Court to grant the application so that the Applicant can access his right to appeal to the Court of Appeal.

Ms. Joanita Paul represented the Respondent during hearing. She submitted along the line of what was averred by the Respondent in his counter affidavit. She submitted that the application is opposed because the grounds adduced by the Applicant are unfounded. To justify her argument, Ms. Paul submitted that there is no evidence of the fact that the Applicant received a copy of judgment on 10/9/2020. She argued further that if one counted days from the date the Applicant claims to have received a copy of the judgment up to the date of filing of his application to this Court, the delay is 30 days and not 18 days as submitted by the Applicant. She said that the delay of 30 days

has not been justified and that it cannot be said that the Applicant was preparing Court documents for 30 days.

To augment her argument, Ms. Paul referred this court to the case of **NGAO GODWIN LOSERO V JULIUS MWARABU**, Civil Appeal No. 10 of 2015, Court of Appeal, Arusha (unreported) where on page 3 of the typed Ruling of the Court, Mussa, J. A (as he then was) quoting the case of **LYAMUYA CONSTRUCTION CO. LTD**, gave criteria to be considered by Courts in determining applications for extension of time. One of the criteria, it was submitted, is that the Applicant must account for all the period of delay. The other criteria are; the delay should not be inordinate, the Applicant must show diligence and not apathy, negligence or slopiness in the prosecution of the actions which he intends to take.

Ms. Paul submitted further that a delay of 30 days is inordinate and resulted from negligence. She urged this Court to hold, as Mussa J. A did in **NGAO GODWIN LOSERO**, that the Applicant has not demonstrated any good cause to entitle him an extension of time. She thus prayed that the application be dismissed with costs.

Rejoining, Mr. Mselingwa maintained his submission in chief. He then sought to distinguish this case with the case of **NGAO GODWIN LASERO**. He argued that in the latter case, the reason stated in the Applicant's affidavit was ignorance of court procedure as per page 4 and 5 of the Ruling of the Court. He further that, in this instant application, ignorance of Court procedure has not been cited as a reason for delay. He thus called upon this

Court not to apply the decision made in **NGAO GODWIN LASERO**. He concluded by praying this Court to grant the application.

Having heard and considered the submissions of both parties, the issue for my determination is whether a good cause has been shown for granting the application, in term of the provisions of section 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019].

It is trite law that extension of time is a judicial discretion bestowed upon the Court and that the same has to be exercised judiciously. It is for ensuring this duty is properly exercised, the Court of Appeal has developed criteria as those spelt in **NGAO GODWIN LOSERO** (supra) to guide decisions by judges when confronted with these types of applications. It is also a celebrated principle of court practice that each case should be determined in its own circumstances. I shall thus be guided by the above principles in determining this application.

As correctly submitted by Ms. Paul in her opposition to the granting of the order sought by the Applicant, the delay actually is of 30 days and not 18 days as submitted by the learned advocate for the Applicant. It is also true that the Applicant has not fully justified the said delay of 30 days by accounting for each day of delay. I have, however, considered the conclusive part of the Applicant's supporting affidavit where he states that he depends solely on the house *in quo* for living with his family. I think, this statement by itself calls for leniency of the Court in determining whether sufficient cause exists to allow the Applicant pursue his legal battle to the highest court of the land. The circumstances of this application are such that if the

application is not allowed the applicant's hopes of recovering the suit house will vanish into thin air.

Accordingly, the application for extension of time and leave to appeal is granted. The Applicant to file notice within fourteen (14) days from the date of this Ruling. No order as to costs.

It is so ordered.




ABDI S. KAGOMBA
JUDGE
09/11/2021