

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

AT TANGA

MISC. LAND APPLICATION NO. 5 OF 2021

(Arising from Misc. Land Application No. 103 of 2018 of the High Court of Tanga at Tanga)

MIRAJI SHABANI.....APPLICANT

-VERSUS-

RAMADHANI SAID ALLY *(As an Administrator of Estate of the late*

SAID ALLY).....RESPONDENT

RULING

Date of last order:-13/09/2021

Date of ruling:- 29/10/2021

AGATHO, J.:

This is an application made pursuant to Section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2019. The Application is brought by way of Chamber Summons accompanied with an Affidavit of the Applicant. In the Application, the Applicant prays for an order of extension of time within which to file an appeal to the Court of Appeal.

Upon filing the Application, the Respondent filed a Counter Affidavit to oppose the application. The Respondent objected the Application. The Court preferred the matter to be disposed by way of written submissions. A

schedule for filing was set and complied by both sides and who were not under legal representation.

In the submission, the Applicant stated that he applied before this Court for leave and certification on points of law to enable him to appeal to the Court of Appeal of Tanzania through Misc. Land Application No. 103 of 2018. The Application was dismissed. The ruling was delivered on 24th day of July 2019 and copies thereof were supplied on the 13th day of September 2019 after a lapse of the prescribed period.

The Applicant further stated that when he obtained a copy of the ruling, he made an application for extension of time to lodge Notice of Appeal which was Misc. Land Application No. 40 of 2019, however the same was struck out because there was no administrator of estate appointed since the demise of the then Respondent one Said Ally. The Applicant further averred that failure to lodge Notice of Appeal within the prescribed time was due to the delay by the Court to supply the copy of the ruling.

The Respondent on his part submitted that the Applicant has failed to account for or state the reason of the delay to file Notice of intention to appeal within 30 days from the date of judgment on the Application for leave and certification of point of law. The Respondent further submitted

that since the Ruling in Misc. Land Application No. 103 of 2018 was delivered on the 24th day of July 2019 then the Applicant was supposed to file a Notice of intention to appeal on or before the 24th day of August 2019. The requirement is provided under Rule 83 (2) of the Court of Appeal Rules, GN. No. 368 of 2009. He further submitted that since the Applicant lodged this Application on the 27th day of January 2021 then 507 days have lapsed without any reasonable excuse. He prayed the Application be dismissed with costs.

When it comes to applications of extension of time, the Court has its discretion whether to grant or not basing on the sufficiency of the reasons advanced before it. In the case of **Blue Line East African Development Bank, Misc. Civil Cause No. 135/95** referred in the case of **Shicha Fatael Kisanga Vs Sarah Obed Monyo, Misc. Civil Application No. 696 2017, HCTZ, Dar es Salaam District Registry at Dar es Salaam** at page 3 it was held that;

"It is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that power to grant this concession is discretionary, which discretion

is to be exercised judicially and upon sufficient cause being shown which has to be objectively assessed by the court”.

What amounts to sufficient cause has not been directly defined. Again, in the case of **Yusuph Same and Hawa Dada vs Hadija Yusuf, Civil Appeal No. 1 of 2002, CAT (unreported)**, it was held that;

"What amounts to sufficient cause has 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 or valid explanation for the delay; lack of diligence on the part of the applicant."

In the instant Application, the Applicant states that the reasons for the delay in filing an appeal is due to the fact that he was not timely supplied with the copy of the ruling. Having gone through the records and submission of the parties, the Applicant states that having obtained the copy of the ruling in Misc. Land Application No. 103 of 2018 on 13th September 2019 which was about an application for leave and certification on point of law and which was actually dismissed, he applied for extension of time within which to appeal against the decision. That was Misc. Land Case Application No. 40 of 2019, the same was struck out as there was no

legal representative or administrator of the estate appointed and the Court ordered the Applicant to refile the same against the legal representative or administrator upon being appointed.

From the above circumstances it is not disputed that from the 13th September 2019 to 19th day of February 2020 when Misc. Land Case Application No. 40 of 2019 was struck out, the Applicant had already been supplied with the copy of the ruling of the contested decision which is Misc. Land Application No. 103 of 2018 but he was ordered by the Court to refile the Application for extension of time upon appointment of the administrator of the estates.

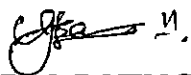
In the matter, the Applicant has not disclosed as to when the administrator of the estate was appointed and that means he was supposed to account for the days of the delay from the 19th day of February 2020 when Misc. Land Case Application No. 40 of 2019 was struck out to the day before lodging this Application. As the Application was lodged on the 27th day of January 2021 as per the Exchequer Receipt Number EC100810195979, then the Applicant was supposed to account for the days of the delay to the date before the application was lodged. Since there are no sufficient explanations, this Court finds that there are no reasonable grounds

warranting it to exercise its discretion to extend the time limited by the law, as such the Application is dismissed for want of merits. Since the parties were not represented by any Advocate, no order for costs is given.

It is so ordered.



Dated at **TANGA** this 29th day of October 2021.


U. J. AGATHO
JUDGE
29/10/2021

Date: 29/10/2021

Coram: Hon. Dr. U. J. Agatho, J

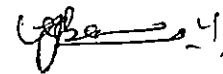
Applicant: Present

Respondent: Present

C/C: Zayumba

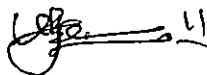
Court: Ruling delivered today in presence of the Applicant and the Respondent.




U. J. AGATHO
JUDGE
29/10/2021

Right of Appeal explained.




U. J. AGATHO
JUDGE
29/10/2021