

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY AT ARUSHA

MISC. LAND APPLICATION NO.95 OF 2021

(Arising from Land appeal No. 24 of 2014 at the High of Tanzania , Arusha District Registry at Arusha and Land Appeal No. 17 of 2013 at the District Land and Housing Tribunal for Arusha at Arusha , original Land Application No.11 of 2012 at the Maroroni Ward Tribunal.)

ELIPOKEA NGOE..... APPLICANT

Vs

KATARINA KAVEI.....RESPONDENT

RULING

Date of last Order:1-6-2022

Date of Ruling:22-6-2022

B.K.PHILLIP.J

This ruling is in respect of an application for extension of time within which the applicant herein can file an application for certification of point of law, so as to appeal to the Court of Appeal of Tanzania. The application is made under the provisions of section 11(1) of the Appellate Jurisdiction Act, supported by an affidavit sworn by the applicant. The respondent filed a Counter affidavit in opposition to the application. The learned Advocates, Fridon Bwemelo and Lengai Merinyo appeared for the applicant and respondent respectively. The application was heard viva voce.

Mr. Bwemelo, started his submission by adopting the contents of the affidavit in support of the application and went on to argue as follows; That the applicant herein had lodged his appeal to the Court of Appeal against the decision of the High Court , the subject of this appeal vide

Appeal No.92 of 2019.However, the same was struck for being incompetent since it was not accompanied with a certificate on point of law as required by the law. The applicant has been prosecuting his case in person, unrepresented. After the aforesaid appeal No. 92 of 2019 was struck out , the applicant struggled to raise funds for hiring an advocate who can assist him in prosecuting his case. Thus, after obtaining some funds he instructed an advocate to lodge this application.

Furthermore,Mr. Bwemelo, submitted that the points of law intended to be raised in the intended application for certification on point of law if this application is allowed, are enumerated in the affidavit in support of this application some of them are; That the decision of the Ward Tribunal (Henceforth " the Tribunal") is tainted with irregularities since the exhibits tendered by the applicant at the Tribunal were not received for no good reasons.There was no fair trial at the Tribunal and the applicant has been staying in the suit land for 34 years. The applicant has been handling his case diligently and making serious follow up. Mr. Bwemelo contended that the applicant has met all the requirements stipulated in the case of **Lyamuya Construction Co.Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2020**, (unreported), to move this Court to grant this application. He prayed this application to be granted.

In rebuttal, Mr. Merinyo submitted that the key points in support of this application are stated in paragraph 9 of the affidavit in support of this application. He argued that the points stated in paragraph 9 of the affidavit in support of this application are not good enough to move this Court to

grant this application on the ground that the same raises new issues /things which were never ever been raised in this matter throughout from the Ward Tribunal to this Court. To cement his arguments he referred this Court to the contents paragraph 6 of the Counter affidavit and referred this Court to the appeal that was lodged at the District Land and Housing Tribunal (Henceforth " Land Tribunal") , and the judgment thereto, and the appeal that was lodged in this Court and the judgment thereto which were all annexed to the Counter affidavit. He insisted that all points enumerated in the applicant's affidavit are not reflected in the pleadings and the judgments of this Court, the Land Tribunal and the Ward Tribunal. There is nowhere in the pleadings indicating that the applicant prayed to bring additional evidence and denied. Contended ,Mr. Merinyo. He was of the view that in this matter there is not any point of law worth the consideration of the Court of Appeal. He urged this Court not grant this application. Relying on the case of **Lyamuya Construction** (supra) Mr . Merinyo argued that the discretional powers conferred to this Court by the law requires to be exercised judiciously not arbitrary or according to private opinion. He contended that the applicant's affidavit contains a lot of issue which are based on private opinions not the Court's records. For instance , the applicant's contention that he has been in the suit land for 1985 is not supported by and evidence, contended ,Mr Merinyo . He also cited the case of **Tanzania Revenue Authority Vs Isack Kola , Misc. Application No. 78 of 2010** (unreported), to cement his arguments.

Furthermore, Mr. Merinyo argued that filing defective appeal/application does not amount to being diligent . The fact the applicant is a lay person does not bar the respondent from enjoying the fruits of the judgment made in his favour.

In conclusion of his submission, Mr. Merinyo, pointed out that the fact that the applicant is aged, is not a good reason to grant this application. To cement his arguments he cited that case of **Dr Ally Shabray Vs Tanga Bohora Jamaat , (1997) TLR 305** , in which the Court held that there should not be any relaxation of the procedural rules.

In rejoinder, Mr. Bwemelo submitted that the points of law stated in paragraph 9 of the applicant's affidavit are not new issues. All are reflected in the judgment of the Land Tribunal and this Court. He insisted that the cases cited by Mr. Merinyo requires the applicant to show sufficient cause for the delay and in this application the applicant has shown sufficient cause for the delay. He contended that the case of **Dr Ally** (supra) is irrelevant in this application. The applicant's argument is that the delay is due to the fact that he has wasted so much time in prosecuting his case and unfortunately, his appeal at the Court of Appeal was struck out, argued , Mr. Bwemelo. He insisted that this application is for extension of time for the applicant to be allowed to apply for the certification of points of law out of time. It is not an application for certification of point of law.To cement his arguments he cited the case of **Zaina Salum Vs Michael Masanyo Kimaro, Misc. Civil Application No. 685 of 2018** ((unreported)).

By the leave of this Court , Mr. Merinyo made the following response in respect of Mr.Bwemelo's submission in respect of the aforesaid case of **Zaina Salum** (supra); That the holding in the case of **Zaina Salum** (supra) is to the effect that in an application for extension of time to file application for certification on point of law the applicant has to show that there are point(s) of law worth the attention of the Court of Appeal. Therefore, the case **Zaina** (supra) is in favour of the respondent's arguments.

Having dispassionately analyzed the rival arguments made by the learned Advocates appearing herein as well as perused the pleadings, I wish to start by pointing out that the application before me is for extension of time within which the applicant can lodge his application for certification of point of law. Therefore, my task is to determine whether or not the applicant has adduced sufficient cause for the delay. I thought it is important to make this position clear on the onset because the arguments raised by the learned advocate to a great extent involved a discussion on whether or not the points of law stated by the applicant in his affidavit are worth the consideration of the Court of Appeal. I think those arguments have been raised prematurely.

In this matter there it is not in dispute that the applicant herein has been prosecuting this matter since 2012.He went as far as filing his appeal to the Court of Appeal , vide Civil Appeal No.92 of 2019, which was struck out on 21st September 2021 for lack of certificate on point on law, notice of appeal from the Land Tribunal was missing in the record of appeal and the certificate of delay was defective.

It is a common ground that granting or refusal to grant an extension of time is within the Court's discretion .However, the same has to be exercised judiciously. The applicant has to adduce sufficient cause for the delay. There are no hard and fast rules on what amount to sufficient cause but our Courts have established some guiding factors in determining the sufficient cause. In the case of **Tanga Cement Co. Ltd Vs Jumanne D. Masangwa and another , TAG Civil Application No.6 of 2001** (unreported) the Court of Appeal said the following;

" 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 valid explanation for the delay, lack of diligence part of the applicant.. "

In addition, sufficient cause for delay are not exhaustive, it depends on the circumstances of each case. In the case of **Yusufu Same and Hawa Dada Vs Hadija Yusufu , Civil Appeal No. 1 of 2022** , (unreported) , the Court of Appeal held as follows;

"... It should be observed that the term " sufficient cause " should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step.. "

Now, back to the facts surrounding this application , in my opinion, the period which the applicant has to account for the delay is between 21st September 2021 when his appeal at the Court of Appeal was struck out and 12th November 2021 when he filed this application that is ,a period of about 62 days. The other period, from the date of the decision of this

Court to the date when his appeal was struck out by the Court of appeal has been covered because there is no dispute that the applicant spent that period prosecuting his case. Looking at the series of events behind this application and bearing in mind that the applicant is a lay person who has been struggling to prosecute his case all along on his own but finally it became necessary for him to hire an advocate to assist him, on the strength of the decision of this Court of Appeal in the case of **Yusufu Same** (supra), I am of the settled opinion that spending 62 days struggling to raise funds to engage an advocate is a reasonable period.

Without prejudice to my findings herein above, in fact, the delay in this matter can also be termed as a technical delay as per the decision of the Court in the case of **Fortunatus Masha Vs William Shija and Another** (1997) TLR 154, in which the Court held that a distinction should be drawn between cases involving real and/or actual delays and those involving technical delays. The applicant herein managed to lodge his appeal to the Court of Appeal in time, only that the same was struck out for lack of certificate on point of law, among other things. Thus, it is the finding of this Court that the applicant has accounted for all days of delay.

As I have intimated at the beginning of this Ruling the learned advocates have made substantive submissions on whether or not the points of law mentioned by the applicant in his affidavit are worth the attention of the Court of Appeal. I have decided not to deal with those arguments because by so doing I will end up making findings for issues which are not the subject of this application and might prejudice the parties in the

application for certification of the points of law. In my opinion the fact that the applicant mentioned in his affidavit the points of law he intends to raise in his application for certification of point law is enough to enable this Court to grant this application since the applicant has adduced sufficient cause for the delay. The issue on whether or not the points stated in the applicant's affidavit are worth the attention of the Court of Appeal shall be determined in the appropriate application. What I have explained herein above distinguishes the case of **Zaina Salum (supra)** from this application, because in that case the applicant did not mention any point of law intended to be raised at the Court of Appeal.

In the upshot, this application is granted. The applicant has to file his application for certification of point of law within thirty (30) days from the date of this Order. Each party will bear his own costs.

Dated this 22nd day of June 2022




B.K.PHILLIP

JUDGE