

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

**MISCELLANEOUS LAND APPLICATION NO.50 OF 2021
SOLOMONI MAHUMBI..... APPLICANT**

VERSUS

JUMA KAYUNGILO.....RESPONDENT

*(Application from the judgement of the High Court of Tanzania at Shinyanga
before Hon.E.Y. Mkwizu, Judge, in Land Appeal No.13 of 2021)*

RULING

11th April & 22nd April, 2022

MATUMA, J.:

The Applicant herein above filed this application under the provisions of section 11 (1) of the Appellate Jurisdiction Act Cap.141 R.E 2019 and any other enabling provisions of the law praying for the following orders:

- a. That, this Honourable Court be pleased to grant extension of time to file an application seeking leave to appeal to the Court of Appeal.*
- b. That, this Honourable Court be pleased to grant extension of time so as to take any other steps incidental to the intended appeal.*
- c. Costs of this application be provided for.*

This application is supported by an affidavit sworn by the Applicant Solomoni Mahumbi on 24th day of October,2021.

When this application came for Mention on 28th February,2022, the Applicant prayed this application be disposed by way of written submissions. Following the prayer of the Applicant, this Court made an order and scheduled presentation of written submissions. The parties herein complied with the orders of this court and filed their submissions promptly.

Unfortunately, the Applicant `s written submissions is not helpful for determination of the application at hand as he has no even a single word in it trying to account for the delay. He has rather presented the written submission challenging the impugned judgement of this court as if he was arguing an appeal against the judgement of this court.

In reply to such purported Applicant's submission, Mr. Bakari Chubwa Muheza Learned Advocate for the Respondent faulted such purported submission by the Applicant in support of the application for extension of time for Applicant to file an application for leave to appeal to the Court of Appeal of Tanzania. The Learned Advocate was of the view that the Applicant be treated as a party who has failed to prosecute his application for failure to present a written submission in support of the application,

hence dismissal of this application as per the authority in the case of ***Republic v. Novatuze Mtorela Criminal Appeal No. 180 of 2014*** HC-Dar es salaam, at page 4 which referred to the case of ***National Insurance Corporation (T) Ltd and Another v. Shengena Limited Civil Application No.20 of 2007.***

From the above respective positions of both parties, and after my perusal of the written submissions of both parties, I concur with Mr. Bakari Chubwa Muheza Learned Advocate for the Respondent that indeed the submission filed by the Applicant do not state anything regarding his application. I however hesitate to dismiss this application on the ground that the Applicant has failed to file his written submission in support of the application. This is because technically he has filed such submission but substantially, he is not. He has filed a written submission which has run on a wrong direction just beating about the bush.

For the sake of justice, I will ignore such submission which is useless in the circumstances of this application but consider the Applicant's affidavit to see whether it has established any good cause for the delay.

The provisions of **section 11(1) of the Appellate Jurisdiction Act Cap 141**, gives power to this court to extend time in order to file among



others, application for leave to appeal to the court of appeal. The section reads;

"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgement of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

In view of the stated position of the law above, the court may exercise its discretion to extend time to file an application for leave to appeal to the court of appeal. However, it is a trite law that, for this court to grant extension of time, the applicant has to give sufficient reasons for the delay to enable the court exercise its discretionary powers. This was held in a number of cases including but not limited to ***Regional Manager TANROAD Kagera v. Ruaha Concrete Co. Ltd, CAT, Civil Application No.94 of 2007 at DSM (unreported)*** that;

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the



court material which will move the court to exercise its judicial discretion in order to extend the time limit by the rules."

As I have said earlier, the Applicant's written submission is useless for purporting to argue against the impugned decision of this court. He has at least explained something relating to the cause of his delay in his affidavit at paragraphs 3,4 and 5 which reads;

"3. That I had no money to pay the lawyer for preparing notice of intention to appeal and an application for leave to appeal to the Court of Appeal of Tanzania on 20.09.2021. I asked for financial help from one Samaritan namely Nicolas Elite whereby on 29.09.2021 he obtained the money which was sufficient for preparing and filing notice of intention to appeal only.

4. That on 30.09.2021 the lawyer assisted me in preparing my notice of intention to appeal to the High Court of Tanzania at Shinyanga District Registry as required by the Court of Appeal of Tanzania Rules,2009 as amended and on 01.10.2021 the same was filed to the High Court of Tanzania at Shinyanga District Registry.

5. That on 23.10.2021 the said Samaritan helped me the money for preparing and filling the application for leave to appeal to the Court of Appeal of Tanzania and that on 24.10.2021, I approached the lawyer for legal consultation in respect of filing the said leave to appeal to the court of appeal of Tanzania whereby the same advised me to file this application as



prescribed time for filing the application for leave to appeal to the Court of Appeal of Tanzania was already expired."

The records shows that the impugned judgement in Land Appeal No.13 of 2021 was delivered on 17/09/2021 and this application for extension of time to file application for leave to appeal to the court of appeal was filed on 8/09/2021. That was out of 30 days the time within which application for leave is required to be lodged.

According to the contents of the Applicant's affidavit as quoted above, the delay was due to financial constraints. He has deposed that, one Samaritan namely Nicolas Elite assisted him the money for preparation and filing the application for leave but he was already out of time hence this application. Financial constraints is not a sufficient ground for extension of time unless it is so peculiar as it was decided by the Court of Appeal in several cases including that of ***Yusuph Same and Hawa Dada v. Hadija Yusufu Civil Appeal No.1 of 2002, at page 10*** (unreported).

In the instant application, I am of the view that, such peculiarity is wanting as there is no evidence on record to show that the applicant was really financially unfit. Even though, we have legal remedies for those who are financially unstable. They may seek legal aid for preparation of documents and seek exemption of filing fees.

The Applicant has not stated whether he resorted to any of the available legal remedies for those who faces financial constraints. His averments in the affidavit thus remain nothing but afterthought. This is due to the fact that, even an affidavit of the said Samaritan has not been filed to support the averments of the applicant. In the case of *John Chuwa v. Antony Ciza (1992) TLR 233 (CAT)* and that of *Teresia Marwa Francis v. Francis Mussa Chacha Misc Civil Application No 22 of 2021 HC at Kigoma*, it was held that, an affidavit of a person so material has to be filed to authenticate the material fact so alleged.

In the circumstances, I am of the view that the Applicant has not been able to convince this court to extend time for him to file application for leave to appeal to the court of appeal. In other word the Applicant has failed to disclose sufficient reasons for the delay. Consequently, this application is dismissed. Parties are ordered to bear their own costs.



It is so ordered.

A handwritten signature in blue ink, appearing to read 'A. MATUMA', written over a horizontal line.

**A.MATUMA
JUDGE
22/4/2022**

DATED at SHINYANGA this 22nd day of April,2022.

**A.MATUMA
JUDGE
22/4/2022**