

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 75 OF 2020

(Originating from Land Appeal No. 74/2017 of the High Court of Tanzania at Dodoma and Arising from the District and Land and Housing Tribunal for Singida in Land Application No. 96/2016)

SHABANI SUNGI.....APPLICANT

VERSUS

ISMAILI MUMBU (Administrator of the Estate of the late Salumu Mumbu)RESPONDENT

RULING

10/05/2022 & 16/05/2022

KAGOMBA, J

The applicant SHABANI SUNGI seeks orders of this court for extension of time to enable him file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this court delivered on 13/09/2018 in Land Appeal No. 74 of 2017 out of time. He also prays for costs of the application and any other reliefs this court shall deem fit and just to grant.

The application has been preferred by way of chamber summons made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and is supported by an affidavit of the applicant. The Respondent is Ismail Mumbu, the administrator of the estate of the late Salumu Mumbu.

In the supporting affidavit, the applicant gives an account of events that ensued after delivery of the impugned decision of this court in the said Land

Appeal No. 74 of 2017, culminating into the filing of this application. The same seeks to justify the granting of the orders sought in the chamber application. The application is however resisted by the respondent, who finds it to be baseless and a wastage of time.

On the date set for hearing, the applicant was represented by Mr. Sostenes Peter Mselingwa, learned advocate while the respondent appeared without legal representation. The submission of the applicant's advocate was, by and large, in line with what is averred by the applicant in his supporting affidavit, which was adopted to form part of the submission.

Mr. Mselingwa submitted to this court that the reasons supporting the application are found in paragraphs 3,4,5 and 6 of the supporting affidavit. He clarified that following the decision of this court in the Land Appeal No. 74 of 2017, the applicant followed all the procedure and managed to file his appeal to the Court of Appeal. However, the Court of Appeal has struck out the appeal on 23/9/2020 because of technical reason so that the applicant can follow due procedure for filing his appeal which was deemed to be filed out of time. It is for this reason the applicant seeks to comply with the procedure for extension of time to file his appeal. Mr. Mselingwa further submitted that the delay was not caused by negligence on part of the applicant.

Mr. Ismail Mumbu, on his part also adopted his court affidavit to form part of his submission. He went on to oppose the application mainly for the reason that he had already won the case in the District Land Tribunal and in this court and therefore he prayed the court to dismiss the application for this case to come to an end.

The issue for determination is whether the applicant has adduced sufficient reason for granting of the application. The court is alive to the factors set by the Court of Appeal in its various decisions on extension of time. I am mindful of the decision in **ZUBERI NASSOR MOHAMED V. MKURUGENZI MKUU SHIRIKA LA BANDARI**, Court of Appeal (Zanzibar), Civil Application No. 93/5/ of 2018 where the Court of Appeal quoting the case of **SAMWEL SICHONE V. BULEBE HAMISI**, Civil Application No. 8 of 2015 (unreported) and the case of **HENRY MUYAGA V. TTCL**, Civil Application No. 8 of 2011 mentioned several factors to be considered including the length of delay, cause of delay, the chance of success of intended appeal and whether there will be prejudice to the respondent if the application is allowed.

The court is also alive to the criteria set by the Court of Appeal in **LYAMUYA CONSTRUCTION LTD V. BOARD of TRUSTEES of YOUNG WOMEN CHRISTIAN ASSOCIATION OF TANZANIA**, Civil Application No. 2 of 2020, where courts are to require the applicant to account for each day of delay; see to it that the delay was not inordinate; the applicant to have shown diligence as opposed to sloppiness in prosecution of his an action that he decided to take, and other sufficient reasons available to a court to grant the application before it.

In this application, the impugned judgment of this court was delivered on 13/09/2018 and immediately on 18/09/2018 the applicant filed a notice of appeal. However, the applicant delayed to lodge his memorandum of appeal by more than eleven (11) months since he had timely filed his notice of appeal. Then, the applicant proceeded to lodge his memorandum of appeal

on 19/08/2019 in contravention of Rule 90(1) of the Tanzania Court of Appeal Rules, 2009, which requires the appeal to be lodged within 60 days of the filing of the notice.

As the issue is whether the applicant has adduced sufficient reason for the application to be granted, I have repeatedly read the supporting affidavit to see if such sufficient reason has been adduced to find absolutely none. The learned counsel for the applicant informed this court that the reason supporting the application are adduced in paragraph 3, 4, 5 and 6 of the applicant's affidavit. He said the application is therefore filed due to requirement of procedure. The applicant's advocate further submitted that the delay is not caused by applicant's negligence. However, the applicant has not bothered to adduce any good cause for the delay of more than eleven (11) months in filing his memorandum of appeal. Paragraph 5 states that "the delay has been caused by the procedures and proceedings from this court to and court of appeal as stated in para 4" of the supporting affidavit. The referred paragraph 4 states:

"4. That, since the Applicant was still aggrieved he filed a leave to Appeal to Court of Appeal and after leave was granted, the Applicant then lodged Civil Appeal No.346 of 2019 to the Court of Appeal of Tanzania at Dodoma. On 23rd September, 2020 his appeal was stricken out for being incompetent hence the notice of appeal is all along out of time."

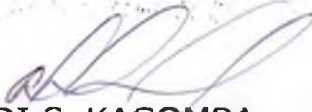
As clearly seen from the cited paragraph of the affidavit, the applicant has not adduced any reasons for so much delay as stated earlier. The affidavit

contains more of events as they were unfolding without stating what exactly caused the delay. In the circumstances, I am of settled mind that no sufficient cause has been adduced by the applicant for this court to justifiably grant the application. The application therefore is devoid of merit and is accordingly dismissed with costs.

Ordered accordingly.

DATED AT DODOMA THIS 16TH DAY OF MAY, 2022




ABDI S. KAGOMBA
JUDGE