

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPLICATION NO. 80 OF 2020

(Arising from Land Appeal No. 29 of 2012 of the High Court of Dodoma and originated from Land Application No. 85 of 2010 of the District Land and Housing Tribunal for Dodoma)

WILLIAM ONESMO SANGA (as Administrator
of Estates of **EVELINA SANGA**) **APPLICANT**

VERSUS

RAMADHANI MOHAMED NONDO **RESPONDENT**

RULING

18/05/2022 & 02/06/2022

KAGOMBA, J

EVELINA SANGA filed a chamber summons in this Court moving the Court to grant her extension of time to file notice of appeal and an application for leave to appeal to the Court of Appeal of Tanzania (CAT). The application is made under Section 47(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2002] and Section 4(10) of the Land Disputes Courts Act, Cap 216 R.E 2002]. The Chamber Summons filed by the applicant is supported by an affidavit sworn by the applicant herself. The applicant further prays for costs of the application and any incidental orders as this Court shall deem fit and just to make.

The applicant's affidavit states the grounds for this application, which to rephrase them, are to the effect that the applicant in first place after being dissatisfied with the decision of this Court in Land Appeal No. 29 of 2012 she managed to lodge a notice of appeal to the CAT within time and later applied for an order for extension of time to file an application for leave to appeal which was successful and hence she filed an appeal to the CAT which however was struck out for being time barred. In that circumstance it is applicant's averment that the delay to file notice of appeal as well as leave to appeal to the CAT is a technical one and is not due to inaction on her side.

The applicant further avers that there are points of law fit to be disposed by the CAT, hence it shall be in the interest of justice if this application is allowed granted.

On the side of RAMADHANI MOHAMED NONDO ("the respondent"), he filed a counter affidavit in opposition to what was averred by the applicant in his affidavit and had put the applicant to a strict proof therefore.

Before hearing of this matter, the applicant EVELINA SANGA was reported dead, hence the Court had to wait for appointment of the administrator of her estates. Upon appointment of the administrator one WILLIAM ONESMO SANGA, the Court ordered the name of administrator to be entered into Court's record as the applicant.

During hearing of the application, Mr. Elias Subbi, the learned advocate represented the applicant, while Ms. Joanita Paul learned advocate, who was holding brief of advocate Peter Kalonga appeared for the respondent.

Mr. Subbi submitted to the Court that the applicant's delay to file notice of appeal and leave to appeal to the CAT was technical as the applicant managed to appeal to the Court of Appeal, an appeal which was however struck out for time limitation and therefore the delay was not occasioned by applicant's negligence.

Support his contention Mr. Subbi cited the case of **Fortunatus Masha V William Shija and Another (1997) TLR 154, CAT** where it was stated that technical delay should be distinguished from real delay and therefore the Court granted the application before it after having found that the delay was technical and not a real/actual delay. Therefore, it was Mr. Subbi's view that the application before this Court is of similar nature since the applicant was in Court corridors to pursue her rights.

Ms. Joanita Paul, for the respondent, rose to oppose the application, by submitting that the applicant is negligent since in first place she made an application of this nature which the respondent didn't oppose but still the applicant has not taken appropriate move, hence this application.

Ms. Joanita further added that there was no prompt action taken by the applicant after the striking out of her appeal before the CAT on 22/9/2020 as there is a lapse of one month to the filing of this application. In that case she prayed for dismissal of applicant's application with costs.

Mr. Subbi in his rejoinder, opposed the submission by the respondent's advocate that the applicant's delay was not due to negligence but it was due to a technical delay as he submitted in his submission in chief. In addition to that Mr. Subbi urged this Court, in determination of this application, not to be bound by technical issues in rendering justice as stipulated under Article 107A of the Constitution of United Republic of Tanzania, as amended.

Having heard the rival submission, of the advocates for both parties, this Court has to determine whether the applicant has adduced sufficient reason for her application to be granted or not.

First of all, I would like to illustrate the point of technical delay as contended by Mr. Subbi. It is very clear from the submission made by the learned advocate that there is a technical issue emerged as the applicant had reached the CAT but because of issue of time limitation the appeal was struck out and therefore the applicant had to start all over the procedures to knock the door of the CAT. This basically is what we call technical issue as per the above cited case of **Fortunatus Masha V. William Shija and Another.**

*'I am satisfied that a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called **technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted.** [Emphasis added]*

In that case, technical delay is among the reasons acceptable by Courts in our jurisdiction to grant extension of time. But raising the issue of technical delay doesn't automatically warrant the grant. The applicant has to satisfy the Court that prompt measures were taken to pursue whatever right a party has, as in our case is to take immediate measures with the High Court in order to institute a fresh appeal to the CAT. This is shown in the same case of **Fortunatus Masha** (Supra).

"In fact in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal."

Therefore, the applicant had to take immediate actions after the order of the CAT to strike out her appeal. Essentially, in this matter there is an expiry of thirty (30) days as the appeal was struck out on 22/9/2020 and this application was made on 21/10/2020, which in my opinion cannot be said as an immediate action. Hence the applicant had to state what made her to approach this Court after expiry of 30 days as it was submitted by Ms. Joanita.


Moreover, I am aware of the fact that this Court has mandate to grant extension of time where there are points of law raised which requires Court's intervention. However, in the circumstances despite the fact that the applicant's affidavit under paragraph 7 introduces the same, Mr. Subbi on his submission has stated nothing on it and therefore the Court has failed to analyse the referred point of law.

It is therefore the view of this Court that the applicant has not adduced sufficient reasons for the application to be granted. I accordingly dismiss the application with no order as to costs.

It is so ordered.

Dated at DODOMA this 02nd Day of JUNE, 2022




ABDI S. KAGOMBA
JUDGE