

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO 03 OF 2022

(Arising from the decision of the High Court Land Appeal No. 14 of 2019)

MAPINDUZI MBARUKU.....APPLICANT

VERSUS

HUSSIN SUFIAN MKOMBOZI..... RESPONDENT

MANSOOR J

DATE OF RULING- 22ND /JULY/2022

RULING

The applicant filed an application for extension of time to file the Notice of Appeal to present the appeal against the decision of the High Court in Land Appeal No. 14 of 2019 delivered by Honorable Mruma J. The decision was delivered on 08th July 2020. The Applicant also applies for extension of time to file an application for leave to appeal to the Court of Appeal against the said decision.

The reasons for delay are stated in the affidavit of the Applicant in particular paragraph 4 and 5 of the affidavit. She states that immediately after the judgement was delivered, she fell sick and



had to attend the hospital for medical treatment. She attached the medical chits as part of her affidavit, so the delay is not inordinate and not due of his lack of diligence or negligence. She also stated in paragraph 5 of her affidavit that the proceedings of the High Court and the lower courts/tribunals were tainted with irregularities and illegalities, and thus worth the consideration of the Court of Appeal.

The Application was opposed by the respondent and in his written submissions, the respondent says the application is incompetent for failure to comply with the mandatory provision of Rule 46 (1) of the Tanzania Court of Appeal Rules, 2009, in that the Applicant ought to have filed the Notice of Appeal before she applied for leave to appeal. The respondent also attacked the application stating that the Applicant was not able to exhibit sufficient cause for the delay. The respondent cited several decisions of the Court of Appeal, in which all requires the Applicant to show sufficient reasons for delay. The respondent argues that the reasons stated in the affidavit contradicts those stated in the submissions. While in the affidavit the applicant says she was sick but, in the submissions, she says he

was attending to her sick mother. The respondent's states that if the story about the sickness of the applicant's mother is true, then as per the applicants' own records brought to court, the mother died two days before the judgment was delivered, and so there was no reasons for delaying for one year to file an application for leave to appeal or to file the Notice of Appeal. That said, the respondent argues that the applicant failed to account for each day of delay, and she should not be given extension for he was negligent and exhibited lack of diligence.

In her rejoinder submissions, the applicant did not reply on the question of contradictions between the contents of his affidavit, and the submissions, she simply narrated his submissions in chief.

I have carefully considered the parties submission in deciding the matter. Firstly, the jurisdiction of this Court on matters lying to the Court of Appeal is limited to three categories, in accordance with Section 11 (1) of the Appellate Jurisdiction Act, Cap 141:

1. Extension of time for giving Notice of Appeal.

2. Extension of time for making an application for leave to appeal.
3. Extension of time to file a certificate on point of law.

In the case of **Ibrahim Mbando vs Abbas Mtigo Civil Appeal No. 96/2005**, at page 5, and the case of the **Attorney General vs Board of Trustees of Cashewnut Industry Development Trust Fund and another, Civil Appeal no. 73 of 2015**. In the Ibrahim Mbando's case, his Lordship Kaji JA, had this to say:

"Under Section 11 (1) of the Appellate jurisdiction Act, 1979, as amended, the jurisdiction of the High Court in respect of extending time to matters coming to this Court is limited to three categories:

One, to extend time for making an application for Notice to appeal. Two, to extend time for making an application for leave to appeal. Three, to extend time for a certificate that the case is a fit case for appeal (certificate that a point of law is involved.) "

The case of **AG vs the Board of Trustees of Cashewnut Industry Development Trust Fund and Hammers Inc. Co. Limited**, at page 9, the Court of Appeal had this to say:

"The wording of the extracted provision tells it all in that the same exclusively relates to applications for enlargement of time to lodge a Notice of Appeal, to seek leave to appeal or a certificate to the effect that the case is fit for appeal. That being the situation, it necessarily follows that the High Court is not enshrined with jurisdiction to hear and determine a request, such as the present one, for extension of time within which to mount an application for revision."

Section 11 (1) of the Appellate Jurisdiction Act, provides as follows:

- (1) 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 judgment 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.

The Applicant have cited Section 11 of the Appellate Jurisdiction Act, Cap 141 R: E 2002. Section 11 (1) of the Appellate Jurisdiction Act provides for three categories in which the High Court is vested with jurisdiction to grant extension of time, i.e., For giving notice of appeal, for making an application for leave to appeal, and for a certificate on point of law. See the Ruling of Hon. Judge Kileo JA, in the case of the **Board of Trustees of Cashewnut Industry Development Trust Fund vs Hammers Incorporation Co. Limited Civil Application No. 220 of 2014,**

The High Court is empowered by Section 11 of the Appellate Jurisdiction Act to grant an extension of time to file Notice of Appeal and to extend time for one to file an application for leave to appeal to the Court of Appeal. Rightly so, the Applicant applied for two prayers, one is an extension of time to file the Notice of Appeal, and extension of time to apply for leave to appeal to the

Court of Appeal. The applicant did not state that she had already filed the Notice of Appeal, in fact the present application is to seek for extension of time to file the notice, thus the submissions of the respondent on this issue are totally misplaced.

Now the reasons for delay have been said in the affidavit of the Applicant. The Applicant says she was prevented to file the Notice of Appeal on time since she was sick, and before that she had to attend to her sick mother who died two days before the judgement. I have heard the party's submissions, and it appears that the Applicant herein was aggrieved by the decision of the High Court, but she could not appeal on time since she had encountered problems.

As held in the case of **Kalunga and company Advocates vs National Bank of Commerce (2006) TLR** which states basically that matters of extension of time are matters of discretionary powers of the court, and "*where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material to enable the Court to exercise the discretion given by Rule 8 of the Court of Appeal Rules.*"

The affidavit of the Applicant in support of the application shows sufficient cause for granting the prayers sought, she offered sufficient explanation of why she delayed taking steps for appeal immediately after the decision was delivered.

Although matters of extension of time are matters of judicial discretion, such discretion should be exercised if sufficient reasons have been shown as stated in the case of **Kalunga and Company Advocate vs National Bank of Commerce (2006) TLR 235.**

Applying the above principles to the facts of the present case and particularly since the applicant took actions immediately after she recovered from illness and after having finalized the burial of her mother to have the appeal properly instituted at the Court of Appeal, the reasons advanced by the applicant constitutes sufficient cause for granting the extension sought.

Consequently, based on the above discussions, the applicant has provided good cause for the court to extend the time to file the Notice of Appeal and to apply for Leave to Appeal to the Court of Appeal. The applicant is granted 30 days from today to file the

Notice of Appeal, and to apply before the Court for leave to appeal to the Court of Appeal.

Application is allowed, and each party shall bear his or her own costs.

DATED AND DELIVERED AT TANGA THIS 22ND DAY OF JULY 2022




L MANSOOR

JUDGE

22ND JULY 2022