

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

SHINYANGA DISTRICT REGISTRY

AT SHINYANGA

MISC. LAND APPLICATION NO. 32 OF 2021

(Arising from Misc. Land Appeal No. 6 of 2021)

ELIAS MIPAWA.....APPLICANT

VERSUS

JUMA KAHESHI..... RESPONDENT

RULING

17/05/2022 & 14/06/2022

S.M. KULITA, J.

This is an application for extension of time to file an application for certification on the point of law out of time, so as to appeal at the Court of Appeal of Tanzania, against the decision of this court in Misc. Land Appeal No. 6 of 2021 by Mkwizu, J. delivered on 21/05/2021. The application has been brought by way of chamber summons made under the provisions of section 11(1) of the Appellate Jurisdiction Act [Cap. 141 RE 2019]. It is supported with an affidavit deposed by the Applicant **ELIAS MIPAWA**. Both parties are unrepresented.

In his application the Applicant submitted that, he was out of time to file the application for certification on point of law, before he appeals at the Court of Appeal. He submitted the reason behind the delay which led him to lodge this application for extension of time is this court's delay to supply him with the copies of Judgment, Decree and Proceedings for the Misc. Land Appeal No. 6 of 2021.

The Applicant averred that he filed a Notice of Appeal on 28/05/2021 which is within the prescribed period of 10 (ten) days from the date of judgment which is 21/05/2021. He further averred that on that same date (28/05/2021) he did lodge a letter at High Court praying to be supplied with the said copies which were necessary for him to lodge the said application for certification on point of law.

The Applicant alleged that he was supplied with those documents on 01/07/2021, that is 40 (forty) days later after the expiry of the 30 (thirty) days prescribed period for filing the application. He asserted that as the said delay was not occasioned on his fault, but the court's delay to supply him with the said necessary documents, he prays for his application for extension of time to be granted.

He concluded by praying for the court to allow his application as the reasons he has advanced are genuine and that he has overwhelming chance of success in the matter.

In his reply thereto the Respondent, **JUMA KAHESHI** submitted that it is not true that the Appellant was supplied with the alleged documents on 01/07/2021. He said that, those documents were ready immediately after delivery of the judgment. On that, the Respondent said that he personally needed the copies for those documents and the High Court supplied to him just on the next day after delivery of the judgment, 11/06/2021. The Respondent further asserted that in the register that he had signed on that 11/06/2021 for the supply of documents to him, he found that the Applicant had already signed to have received the documents.

The Respondent further stated that the Applicant's delay to lodge the application for certification on the point of law was not caused by the court's failure to supply him the copies of Judgment, Decree and Proceedings. He said that it is the Applicant's own negligence that led him not to take promptly action to file the application within the statutory time.

It is the further averment of the Respondent that inspite of alleging to be supplied the documents on that 01/07/2021, the Applicant

didn't take trouble to lodge this application promptly, instead he came to file it on 30/07/2021 for no reasons.

The Respondent concluded his submission by praying the application to be dismissed.

In the rejoinder the Applicant reiterated what he had submitted in his submission in chief.

From the above submissions, the issue to be determined is whether the applicant has demonstrated good and sufficient causes to warrant this court to grant the application.

Section 11(1) of Appellate Jurisdiction Act [Cap. 141 RE 2019] states;

"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 the time for giving the notice or making the application has expired."

There is no doubt that the above cited provision gives this court powers to extend time for filing of application for certification on

the point of law, if the Applicant is out of time in lodging the said application. The grant or refusal of the application is within the discretion of the court. However, the said discretion should be exercised judiciously, that there should be reasonable and sufficient cause for the same to be granted. On that, the Court of Appeal in the case of **Benedict Mumelo V. Bank of Tanzania, Civil Appeal No. 12 of 2012, CAT at DSM (Unreported)** had this to say;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

The same was held in **British Broadcasting Corporation V. Eric Sikujua Ng'ymaryo, Civil Application No. 138 of 2004, CAT at DSM (Unreported)** in which the same court held;

"Needless to say, leave to appeal is not automatic. It is within the discretion of the court to grant or refuse leave. The discretion must, however judiciously exercised and on the materials before the court..... "

Furthermore, it is trite law that in application proceedings like this one, the affidavits constitute not only the pleadings but also the evidence. It is equally straight that the applicant must make out his case in his affidavit, as the same is used to be considered in determining the merit of his application. It follows therefore that in order to be entitled for the reliefs sought, the applicant must have set out sufficient facts in his affidavit.

In this application the Applicant asserted at para 4 of the affidavit that on 28/05/2021 he did file at High Court a Notice of Appeal together with a letter requesting to be supplied with the copies of Judgment, Decree and Proceedings. He further stated to have attached a copy for that said letter. But there is no such a copy of letter attached in his pleading (affidavit). I can only see a document he used to call a copy of Notice that he purported to have filed at High Court on 28/05/2021. The said document cannot be regarded a copy of Notice filed at High Court on that 28/05/2021 for the reasons that, it is read to have been signed by the Applicant on 02/06/2021 which is a date subsequent to the date that he alleges to have filed its origin at High Court, which is 28/05/2021. Not only that but the said purported copy of notice does not show to have been received by the Court Registry. It has no rubber stamp for

the receipt by the Court nor signature of the Registry Officer who had received it for admission.

Apart from submitting orally, the Applicant also stated in para 6 of his affidavit that he was supplied with the copies of Judgment, Decree and Proceedings on 01/07/2021. However, the said assertion are just the mere words of the Applicant with no proof at all. He has not attached a copy of the register for the page which shows that he was actually supplied the said documents on that 01/07/2021. The said copy is accessible for any person who is in need of it to prove the date and time that he/she was supplied with the copy.

It is also a trite law that in determining the application for extension of time, the issue of day to day delay is among the things that are used to be considered. In this matter the Respondent rightly challenged that, even if the Applicant was supplied with the documents on 01/07/2021 as he alleged, the he (Applicant) ought to have filed the application promptly, that is immediately after he had received those said copies. Otherwise he was to give reasons for each day of delay from that date (01/07/2021) on which he alleges to have been supplied with the copies of Judgment, Decree and Proceedings.

That is a position of the law as per **LYAMUYA CONSTRUCTION COMPANY LTD V. BOARD OF THE REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION, Civil Application No. 2 of 2010, CAT at Arusha (unreported)** in which it was also held that in the applications for extension of time, each day of delay should be accounted for. The same was held in **BUSHIRI HASSAN V. LATIFA LUKIO MASHAYO, Civil Application No. 3 of 2007, CAT (unreported)**.

The fact that the Applicant submitted nothing as to why he came to lodge this application on 30/07/2021, while he submitted to have been supplied with the documents, necessary for filing the said application since 01/07/2021, the application for extension of time must fail.

For the aforesaid reasons, I find this application with no merit, hence dismissed with costs.



A handwritten signature in blue ink, consisting of stylized initials and a surname.

S.M. KULITA

JUDGE

14/06/2022