

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 413 OF 2021

(Arising from Civil Appeal No. 234 of 2020 before Hon Masabo, J.)

HAND ENTERPRISES.....APPLICANT

VERSUS

KILOMBERO CANE GROWERS

COOPERATIVE SOCIETY LTD.....RESPONDENT

Date of last Order: 6/5/2022

Date of Ruling: 30/6/2022

R U L I N G

MGONYA, J.

This is a ruling from an Application for extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania against the Judgment on Appeal of this Honorable Court, Hon. Masabo J, in **Civil Appeal No. 234 of 2020** delivered on 18th day of March 2021.

The Applicant **HAND ENTERPIRSES** has filed an Application under the provisions of made under **Section 14(1) of the Law of Limitation Act, CAP 89 [R.E. 2019], Section 68(e), Section 95 and Order XLIII Rule 2 of the Civil Procedure Code, CAP. 33 [R.E. 2019]**.

The Application is supported by an affirmed Affidavit of **HUSSEIN ALLY KUMBA** the Applicant's Principal Officer.

In supporting the Application for extension of time, the Applicant averred that, the Applicant hereinabove was the Respondent in **Civil Appeal No. 234 of 2020** which was finalised by Hon. J.L. Masabo on 18th March, 2021. Being dissatisfied with the Judgment on Appeal, the Applicant filed a Notice of Appeal to the Court of Appeal of Tanzania on 1st April, 2021, and saved the Respondent on 3rd April, 2021. Thereafter, on 20th April, 2021 filed an Application to this court for leave to appeal to the Court of Appeal of Tanzania through **Miscellaneous Civil Application No. 184 of 2021** whereas the same was ruled on 20th July, 2021 by Hon L.E. Mgonya, J. for which it was struck out for contravening **Rule 49(3)** of the Court of Appeal Rules, 2019.

The Applicant further averred that the Applicant never stayed idle, thus on 20th August, 2021 filed this Application praying for extension of time to file an Application for leave to appeal to the Court of Appeal.

I have gone through the Respondent's Affidavit and written submission, and it suffices to say that the same strongly objected the Application and finally prayed the Application be struck out.

Having gone through the respective written submissions by the Applicant and the Respondent hereto, I have observed that the

main issued for consideration is whether sufficient reason have been adduced to warrant this Court to exercise its discretionary powers to grant the Application. It is clearly stated by the law that there must be sufficient reasons for Court to exercise its discretionary power in granting the Application sought.

The term sufficient cause has not been defined, so that as to guide the exercise of the Court's discretion in this regards, the Court must consider the merits otherwise of the excuse disclosed by the Applicant for failing to meet the limitation period prescribed for taking the required step or action.

Apart from valid explanation for delay, sufficient cause would also depend on whether the Application for extension of time has been brought **promptly** and whether there was **diligence** on the part of the Applicant.

The question now is **whether the Applicant has shown good cause for this Court to exercise its discretionary powers to grant the Application.**

The Law requires this Court to grant such Applications where sufficient causes have been adduced. In the case of ***BENEDICT MUMELLO VS. BANK OF TANZANIA***, Civil Appeal No. 12 of **2002** the Court held *inter alia* that:

"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 sufficient established that the delay was with sufficient cause."

Having gone through the Applicant's Affidavit, my eyes were caught by paragraph 5 which states:

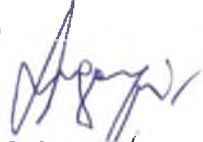
"That I made follow ups to be supplied with the copy of ruling and drawn order and succeeded to get hold on them on 03rd August, 2021 and realise that the time to file an application for leave to appeal to the Court of Appeal have lapsed, hence this application".

From my discretionary powers of which are to be exercised judiciously, it is my opinion that via paragraph 5 above, I have find justifiable reason advanced by the Applicant to constitute good or sufficient cause to warrant this Court to exercise its discretion to extend time within which to file an Application for leave out of time. The Applicant has shown diligence in making a follow to obtain the certified copies of Ruling and Drawn Order of an intended Appeal, as he was not idle.

Having said so, the **Application is accordingly granted.**

I make no order as to costs.

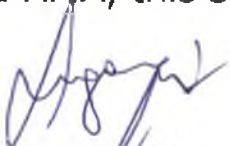



L. E. MGONYA
JUDGE
30/6/2022

Court:

Ruling delivered in my chambers in the presence of the Mr. Abdul Azizi Advocate for Applicant, in the absence of the Respondent and Mr. Richard RMA, this 30th day of June, 2022.




L. E. MGONYA
JUDGE
30/6/2022