

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 10 OF 2021

(C/F Misc. Land Application No.37 of 2016, High Court of Tanzania at Arusha, Land Appeal No. 17 of 2012 High Court of Tanzania at Arusha, Originating from Land Application No. 122 of 2008 District Land and Housing Tribunal for Arusha at Arusha.)

ELIATRISHA E. AKYOO.....1ST APPLICANT

JOHNSON S. MBAGA.....2ND APPLICANT

VERSUS

JULIUS AZAEL.....RESPONDENT

RULING

2/11/2021 & 08/02/2022

GWAE, J

The applicants herein wish to invoke the jurisdiction of this Court to extend time under the provisions of section 11 (1) of the Appellate Jurisdiction Act Cap 141 Revised Edition 2019. The sought order is meant to enable the applicants to file notice of appeal out of time against the decision of the High Court of Tanzania at Arusha (**Massengi, J**) in Misc. Land Application No. 37 of 2016 which was delivered on 23rd September 2016.

The application is accompanied by a supporting affidavit of the 2nd applicant whereas the respondent also filed an affidavit in reply. The following is gathered from the contents of both affidavits of the parties.

That, the applicants were the appellants in Land Appeal No. 17 of 2012 which was dismissed with costs (**Sambo, J**). Aggrieved, the applicants timely lodged a notice of appeal to the Court of Appeal of Tanzania and then filed an application for extension of time to file an application for leave to appeal to the Court of Appeal out of time, the application was granted, and was followed by the filing of Misc. Civil Application No. 64 of 2015 for leave which was however withdrawn with leave to refile.

On the 16th June 2015 the applicants re-filed Misc. Application No. 92 of 2015 for leave to appeal to the Court of Appeal however the same was struck out for non-citation. The applicants then re-filed Miscellaneous Land Application No. 37 of 2016 for leave, yet the same was dismissed following an objection raised by the respondent that, the applicants' application was time barred.

Still persistent to pursue their rights, the applicants approached the Court of Appeal of Tanzania through Civil Application No. 325/17/2017 with

a challenging this court's dismissal order however upon being inquired by the Court of Appeal as to the competence of the application before it, the applicants' counsel conceded that the matter before the Court of Appeal of Tanzania was incompetent. Consequently, the applicants withdrew the matter, hence this application for extension of time to allow them to file the notice of appeal out of time.

The respondent, in his reply to the applicants' application, strongly disputed the grant of this application stating that failure to file the notice of appeal on time is out of negligence followed by failure to adhere to the legal procedures by the counsel for the applicants.

On hearing of this application, the applicants were represented by the learned counsel **Mr. John Lundu** while the respondent appeared in person unrepresented. With leave of the court, the application was disposed of by way of written submission, nevertheless it was only the applicant who complied with the court's scheduling orders, the respondent did not bother to defend his case.

The applicants' submission basically reiterated what is stated in the second applicant's affidavit, they further urged the court to grant the application as they have not been sleeping on their rights.

Examining the parties' affidavits and submission of the applicants the issue for determination is whether the applicants have demonstrated sufficient cause for the delay to file notice of appeal to the Court of Appeal.

What can be grasped from the affidavit deposed by the 2nd applicant is an account of what has been transpiring in the matter giving rise to this application. Essentially, the applicants are seeking the indulgence of this court to file their notice of appeal to the Court of Appeal out of time against the ruling and order of this court vide Misc. Application No. 37 of 2016 dismissing the application for being filed out of the prescribed period of time. As already intimated in the applicants' affidavit the applicants had initially tried to pursue their rights to the Court of Appeal of Tanzania through Civil Application No. 325/17/2017 but the same was withdrawn at the instance of their advocate (Mr. Lundu). The circumstances pertaining to the withdrawal of the case were such that the applicants ought to have filed an appeal and not an application.

The nature of the application filed by the applicants to the Court of Appeal in the first place did not require the filing of the notice to appeal, now the applicants now wish or desire to file an appeal to the Court of Appeal of Tanzania, this court is of the view that, generally this kind of the applicants; delay is a technical one which should be distinguished from ordinary delays but the applicants' application before the Court of Appeal was wrongly and negligently preferred. More so, diligence was expected in filing applications as the applicants were being represented by the senior counsel who ought to have acted reasonably.

Even if delays during pendency of cases / applications would be excluded yet there is a delay of **seven** (7) days from the last order made by the Court of Appeal of Tanzania dated 10th February 2021 to the date of filing this application. Examining the applicants' affidavit, there is no explanation at all that was given by the applicants for such delay. I am not unsound of the principle that, the delay even of a single day has to be accounted for.

Given the nature of the applicants' delays to appeal against the decision of the court (**Sambo, J**) vide Land Appeal No. 17 of 2012 whose judgment was rendered on the 19th April 2013, to be more specifically, the

observed negligence on the part of the applicants' advocate, fruitless efforts to challenge the order of this court (**Massengi, J**) made on the 23rd September 2016 to the Court of Appeal and two applications which suffered from incompetencies (Misc. Land Application No. 64 of 2015 & Misc. Land Application No. 37 of 2016). The applicants and or their advocate are found to have been acting with gross negligence or ignorance of elementary matters of law constantly arising in practice. In this particular dispute I am inclined to adhere to the cardinal principle that litigation should come to an end. I have also taken into account of the applicants' failure to at least account for the delay of seven (7) days from the day the highest court of the land made its order withdrawing the applicants' application for being misconceived.

In the light of the foregoing reasons, I unhesitatingly find that, the applicants have failed to give good cause justifying this court to exercise its discretionary powers bestowed to extend time. Accordingly, this application is dismissed with no order as to costs since the respondent had not bothered to argue this application. It is so ordered.




M. R. GWAE
JUDGE
08/02/2022