

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

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO 11 OF 2022**

(Originating from Land Appeal No 70 of 2021 of High Court of Tanzania at Musoma Land Appeal No 241 of 2020 at District Land and Housing Tribunal for Mara at Musoma and Original Land Case No 89 of 2020 at Ring’wani Ward Tribunal at Serengeti)

**CHACHA ISOHE ..... 1<sup>ST</sup> APPLICANT**

**ISOHE CHACHA ISOHE ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**YOHANA MWITA GENDA ..... RESPONDENT**

**RULING**

11<sup>th</sup> & 25<sup>th</sup> August, 2022

**F. H. MAHIMBALI, J.**

This is an application for extension of time to file application for certificate on point of law. The application is made under section 11 of the Appellate Jurisdiction Act, Cap 141 R.E 2019. The application is supported by the joint affidavit of the applicants.

As to why this application now, Mr. Makongo learned counsel for the applicant submitted that, originally he filed an application No 70 of 2021 for leave to appeal to CAT instead of certification on point of law. As the said case originated from Ward Tribunal, the appropriate application ought to be certificate on point of law and not application for

leave. He thus withdrew it in lieu of filing the proper application. As he was then out of time, this application was then inevitable. The said earlier application was withdrawn on 08/02/2022 and refiled this application on 10/2/2022. The respondent was dully informed. He prayed that the application be allowed.

On his part, Mr. Mahemba learned advocate for the respondent resisted the application on the premise that the applicants have failed to establish as to why they failed to file the said application timely.

He argued that, failure to file proper application (certificate on point of law) cannot be a good ground for extension of time. That exhibits ignorance of legal procedure which is non-excusate. As the matter started from Ward Tribunal, the law is very clear that there be certification on point of law for one to access the Court of Appeal against the decision of the High Court. Therefore, not knowing the law has never been a good excuse.

Moreover, as per paragraph 3 of the affidavit, the said error in the judgment has not been established for this court's consideration. Reading paragraph 2 of the said affidavit, it is clear that there is nothing of sound reason being advanced/pointed out by the Applicant for this court's consideration.

In his considered view, he has not established good reasons for the grant of the said application. Negligence by the advocate has not been a good excuse (see **Deodat Dominick Kahanda and Another vs Tropical Fisheries (T) Ltd and 2 others** Misc. Civil Application No 2009 of 2017, High Court Commercial – Dar es Salaam) laxity of the advocate is not a good ground for extension of time. See also **Ngao Godwin Losero vs Julius Mwarabu** Civil application No 10 of 2015, CAT at Arusha at page 6. On this submission, I pray that this application be dismissed for want of merit.

In his rejoinder submission, Mr. Makongo submitted that the cases cited by Mr. Mahemba, learned advocate are extinguishable from the case at hand. He elaborated that the learned advocate has failed to establish what was his negligence as negligence and diligence are two different words. They must be interpreted and used accordingly. The two cited cases offer different materials. He humbly prayed that this court when retiring for this ruling to be considerate and be justice minded. This being a court of law, it must be fountain of justice.

Having considered the rival submissions by both parties' counsel, the vital question here is whether the application is meritorious.

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from the parties through their respective counsel. For sure I am mindful that to refuse or grant this application is the court's discretion. However, to do so there must accounted reasons for that. It must be done judiciously and with flexibility. In **Mbogo Vs. Shah** (1968) EA the defunct Court of Appeal for Eastern Africa held:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."*

As a general rule, a time barred appeal amounts to dismissal. When that is ordered, then the appeal process cannot be reopened. In the situation at hand, the applicant first lodged Notice of Appeal against the impugned decision timely. However, he found himself filing a wrong application as per law. Instead of filing an application for certification on point of law, the applicant filed an application for leave. Having noted that legal error, he prayed to withdraw it and hurriedly filed this current application as he was then out of time. He is opposed by the respondent that his delay does not offer a genuine ground for extension of time but exhibition of ignorance of the law which is not a good ground for extension of time.

I agree with Mr. Mahemba learned advocate that negligence by the advocate has not been a good excuse (see **Deodat Dominick**

## **Kahanda and Another vs Tropical Fisheries (T) Ltd and 2 others**

Misc. Civil Application No 2009 of 2017, High Court Commercial – Dar es Salaam) laxity of the advocate is not a good ground for extension of time. See also **Ngao Godwin Losero vs Julius Mwarabu** Civil application No 10 of 2015, CAT at Arusha at page 6. However, each case must be considered in its own merits. In the current case, it is clear how the applicant filed the first application on time but he mistakenly confused it with the proper application to be filed. The applicant/his counsel being like other human beings can make errors/mistakes. We should not treat as a general rule that every confusion/mistake made; it be considered as ignorance of the law. Sometimes, it is not ignorance of the law but just a common error in which is remedied by filing a proper application and timely. Nevertheless, this being a noble profession, advocates are urged before filing anything in a court of law which commences a suit or application to make a due diligence that what is being filed is the proper case for the Court's determination.

In my considered view, as there was a timeous filing of Notice of Appeal and the application for leave to appeal to Court of Appeal against the High Court's decision instead of the application for certification on point of law, the error is remedied by filing the proper application. As he was out of time, the appropriate legal course was to file an application

for extension of time as done. In the circumstances of this case, the application is meritorious.

DATED at MUSOMA this 25<sup>th</sup> day of August, 2022.



F. H. Mahimbali

Judge

**Court:** Ruling delivered this 25<sup>th</sup> day of August, 2022 in the presence of the Applicant, Mr. Mahemba, advocate for the respondent and Gidion Mugo, RMA.

F. H. Mahimbali

Judge