

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**MISC. LAND APPLICATION NO. 48 OF 2021**

*(Arising out of Judgment and decree of the High Court of Tanzania at Arusha by Hon.  
Masara J, given on 17<sup>th</sup> May 2021 in the Land Appeal No. 5/2020 arising from Application  
No. 2 of 2018 in the District Land and Housing tribunal for Manyara at Babati)*

**GODFREY LIKINDISHILU.....1<sup>st</sup> APPLICANT**  
**DAUDI MUKAINE .....2<sup>nd</sup> APPLICANT**

**VERSUS**

**ELIYAHU ISRAEL..... RESPONDENT**

**RULING**

21/06/2022 & 30/08/2022

**GWAE, J**

Aggrieved by the decision of this court (**Masara, J**) through Land Appeal No. 5 of 2020 delivered on 17<sup>th</sup> May 2021, the applicants, Godfrey Likindishu and Daudi Mukaine preferred to file an appeal to the Court of Appeal of Tanzania however they found themselves to have been out of the prescribed time. So, this application for extension of time within which to file an application for leave to appeal to the highest court of the land brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 Revised Edition, 2019.

Through their joint affidavit, the applicants have quantified that one of the reasons as to why they did not timely file the application for leave to appeal to the Court of Appeal was the fact that they were not supplied with the court's necessary documents to appeal and that when they were supplied with the same one advocate Fadhili Nangawe advised them that they were to apply for leave but by then they were out of time

This application was opposed by respondent, Eliyahu Israel who filed his counter affidavit disputing some of the contents in the affidavit by stating that, had it been true that the applicants filed their notice of appeal and requested for the supply of the court's documents the same would have been appended to the application.

When this application was called on for hearing on the 17<sup>th</sup> May 2022, the parties sought and obtained leave to argue it by way of written submission. The applicants accordingly presented their written submission as per the court's order whereas the respondent neglected or refused to file his.

The applicants through their written submission have expounded that the delay was out of human error as the learned advocate Fadhili wrongly advised them since the time of filing the same had by then not elapsed and that there are illegalities in the judgment of the court. The

applicants then invited this court to make a reference to the case of **African Air Lines International Ltd vs. Eastern and Southern Africa Development Bank** (2003) EA 1 where the Court of Appeal aptly stated that;

*“In an application for extension of time the discretion which falls to be exercised is unfettered and shall be exercised flexibly with regards to the facts of the particular case”.*

As rightly contended by the respondent via his counter affidavit, the applicants have not annexed some of vital documents to support their sworn affidavit such as a copy of the notice of appeal and a letter requesting for supply of the copies of judgment and decree of the court though the same, in my view, were not necessary for filing an application for leave to appeal to the Court of Appeal since the same are in the same court. Thus, easier for the court to peruse if need arises.

Nevertheless, I am bound to examine the fact that this application was filed on the 21<sup>st</sup> June 2021 whilst the judgment of this court vide Land Appeal No. 5 of 2020 was pronounced on the 17<sup>th</sup> May 2021. According to the Rule 45 (a) of the Court of Appeal Rules, 2009 as amended by GN. 37 of 2017 published on the 22<sup>nd</sup> September 2017, an application for leave

to appeal to the Court of Appeal is supposed to be filed within thirty (30) days from the date of decision or order. Henceforth, delay by the applicants was only for 5 days. As the applicants have moved the court citing section of 11 (1) of the Appellate Jurisdiction Act (supra), It is pertinent to have it reproduced herein under;

*"11.-(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".*

According to the above provision of the procedural law, the court has been vested with autonomous discretion to grant or refuse to grant provided it does so judiciously, of course upon demonstration of sufficient cause since without good cause being shown there will be no legal guidance of granting or refusing applications of this nature as was rightly emphasized in the case of **Livingstone Silay Haru v. Collifred Temu** [2002] TLR 268, that:

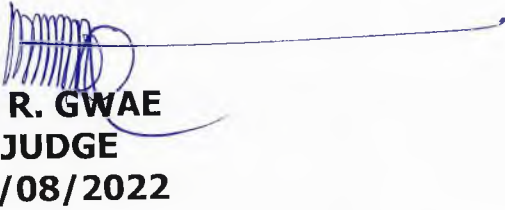
*"It is discretion on the part of the court to grant the extension of time depending on sufficient reason being given to explain the delay".*

In our instant application, the delay is only of five days, I think the applicants have acted promptly taking into account that, they are laypersons who initially did not think of the requirement of obtaining the leave to appeal to the Court of Appeal. Similarly, I have also considered the vibrant fact that, this application must have been electronically filed that means it was filed and submitted for its admission before 21<sup>st</sup> day of June 2021.

In the upshot, I am of the considered view that, this applicants have demonstrated good cause entitling them court's grant of their application as I hereby do. The applicants are given **fourteen (14)** days within which to file their application for leave to file their intended appeal to the Court of Appeal of Tanzania. The time shall start running against the applicants as soon as they are availed with certified copies of the ruling. The costs of this application shall abide to an outcome of either application for leave or the intended appeal.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**30/08/2022**