

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPLICATION NO. 50 OF 2020

(Originating from Land Appeal No. 62 of 2017 of the High Court of the
United Republic of Tanzania at Mwanza)

BENEDICTO ANTHONY KAPAYA APPLICANT

VERSUS

1. IGENG CHARLES 1ST RESPONDENT
2. MASUMBUKO ALON.....2ND RESPONDENT
3. CHACHA MARWA.....3RD RESPONDENT
4. MAMA KUNDI.....4TH RESPONDENT
5. JOYCE MSHABAHA.....5TH RESPONDENT
6. PAULINA.....6TH RESPONDENT
7. JOHN NDAKI.....7TH RESPONDENT
8. ANTHONY HINDIA.....8TH RESPONDENT
9. ZEPHANIA MSHABAHA.....9TH RESPONDENT
10. EDWARD KAZARABANHU.....10TH RESPONDENT
11. KATENGGEZA COURT BROKER AND AUCTION MART...11TH RESPONDENT

RULING

30/12/2021 & 17/03/2022

F. K. MANYANDA, J.

A delay of thirty-five (35) days has brought the Applicant, Benedicto Anthony Kapaya, to this Court applying for extension of time within which to file an application for leave to appeal to the Court of Appeal.



The impugned decision was delivered on 31/03/2020, the deadline of 30 days was on 30/04/2020, this application was filed on 04/06/2020.

The Application is brought under section 5(1)(c) and 11(1) of the Appellate Jurisdiction Act, [Cap 141 R. E. 2019] and Order XLIII Rule 2 of the Civil Procedure Code [Cap 33 R. E. 2019]. It has been made by way of a chamber summons supported by an affidavit sworn by James Njelwa.

The intended appeal stems from an order of this Court which reads as following: -

"I hereby found (sic) to dismiss this appeal since it has taken too long in the court, this appeal case was filed on 22/08/2017, the problem is the original records which are (sic) Miscellaneous Application No. 166B of 2017, consolidated from Miscellaneous Application No. 160A, B, C, D and F of 2017 in Mwanza District Land and Housing Tribunal has not been brought. Mr. Samwel Mahuma, the appellant[s] learned advocate stated that the original records are in the Court of Appeal of Tanzania for appeal. Because the original record is in the Court of Appeal of Tanzania, I dismiss this appeal. While awaiting [the] Court of Appeal of Tanzania decision. Each party to bear its own costs. Order accordingly."



The law provides under section 47(2) of the Land Disputes Act, [Cap. 216 R. E. 2019] that a person aggrieved by a decision of the High Court in its revisional or appellate jurisdiction may appeal to the Court of Appeal of Tanzania upon obtained leave of this Court. It reads: -

"47(2) A person who is aggrieved by the decision of the High Court in the exercise of its revisional or appellate jurisdiction may, with leave of the High Court or Court of Appeal, appeal to the Court of Appeal."

Subsection (4) of the same section 47 provides that the procedure for appeal to the Court of Appeal under this section shall be governed by the Court of Appeal Rules.

Rule 45 of the Court of Appeal Rules provides the time limit to be 30 days from the decision date. It reads as follows: -

"45 In civil matters: - (a) notwithstanding the provisions of rule 46(1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within thirty days of the decision;"

The next question is whether the Applicant has given sufficient cause for delay. The term "sufficient cause" is not yet defined; therefore, it depends on the circumstances of each case. The Court of Appeal in the case of **Salim Lakhani and Two Others vs. Ishfaq Shabir Yusufali (as Administrator of the Estate of Late Shabir Yusufali,** Civil Application No. 455 of 2019 (unreported) held that: -

"What amounts to good cause is yet to be definedit depends on the circumstances of each case. The discretion under Rule 10 of the Rules has to be exercised according to the rules of reason and justice....."

In another case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs. Chairman of Bunju Village and 11 Others,** Civil Appeal No. 147 of 2006 (unreported); the Court of Appeal said: -

"It is difficult to attempt to define the meaning of the words "sufficient cause". It is generally accepted however, that the words should receive liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bonafide, is imputable to the appellant."

Factor for consideration were spelt out in the case of **Henry Leonard Maeda and Another vs. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 CAT (unreported) at page 19;

"..... the courts may take into consideration such factors as the length of delay, the reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."

More elaborately, the Court of Appeal in the case of **Tanzania Revenue Authority vs. Tanga Transport Co. Ltd**, Civil Application No.4 of 2009 laid down the following factors worthy of consideration in determining applications for extension of time. These are:-

- a) The length of the delay;*
- b) the reasons for the delay;*
- c) Whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged; and*
- d) the degree of prejudice to the defendant if the application is granted.*

See also the case of **Lyamuya Construction Company Limited vs. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where relevantly

the Court of Appeal formulated guidelines to consider on what amounts to good cause:

"(a) The applicant must account for all days of the delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

In the instant matter the Applicant gives the reason for the delay in the affidavit as being time taken for waiting to be supplied with the order, public days and some difficulty on e-filing.

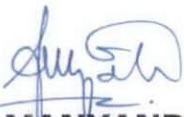
Additionally, the applicant gives a ground on illegality on the face of the records of the impugned order that it was an error to dismiss the appeal on mere allegations that the records were in the Court of Appeal of Tanzania.

I think the Counsel for Applicant is right, that there is an arguable issue on illegality or other wise of the impugned court order which I find expedient to grant the application so that the Applicant can be heard on his application for leave.



It is on this reason that I do hereby grant extension of time for 30 days from the date of this ruling. Due to the circumstances of this matter that there is no party to condemn, each party will bear its own costs. Order accordingly.




F. K. MANYANDA
JUDGE
17/03/2022