

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. LAND APPLICATION NO. 32 OF 2020

AMOSI MANYAMA

GODSON URIO

YUSUPH SAID

MOSHI YUSUPH

FARIDA OMARI

PETER FRANK

ASHA OMARI

OMARY ATHUMANI

ISSA YUSUPH

JUMANNE SALUM MKINDA

JUMANNE JUMA

HAMIS HANGO

MOHAMED RAMADHANI

SARA ISSA

JUMA KIBERITI

MOHAMED IBADI

.....**APPLICANTS**

VERSUS

M/S BIO SUSTAIN TANZANIA LTD.....RESPONDENT

(Arising from Judgement of the High Court of Tanzania, Dodoma-Mansoor, J)

Dated 14th of August, 2017

In

Land Appeal No. 28 of 2016

.....
RULING

08th August & 26th August 2022

MDEMU, J:.

The Applicants in their chamber summons are seeking substantially one order, to wit; that, the Honourable Court be pleased to order extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court delivered on 14th day of August 2017, in Civil Appeal No. 28 of 2016. The application is made under the provisions of Section 11(1) of the Appellate Jurisdiction Act, Cap. 141. It is supported by an affidavit sworn by Mr. Sostenes Peter Mselingwa on 06th day of May 2020.

On the date set for hearing of this application, that is, 12th day of July, 2022, Mr. Mselingwa, learned Advocate representing the Applicants and Mr. Kidumage, learned Advocate representing the Respondent, asked this Court to make an order to proceed by way of written submissions. Their prayer was granted and both complied with the scheduling order of filing their written submissions.

Mr. Mselingwa in his written submissions filed on 26th of July, 2022 argued that, the Applicants were the Appellants in Civil Appeal No. 28 of 2016 before this Court whereas on 14th August, 2017, the case was decided in favour of the Respondent. Aggrieved by such a decision, he lodged a

notice of appeal on 24th August, 2017 and lodged Miscellaneous Land Application No.113 of 2017 applying for leave to appeal to the Court of Appeal. However, on 25th January, 2019 the said application was struck out for citing wrong provision, hence this application. He thus asked the Court to extend time since days of delay has been accounted for and that, reasons for a delay is a technical one and not malicious conduct by the Applicants. Supporting his arguments, he cited the following cases: **Jackson Temba vs. Margret Cosmas, Misc. Civil Application No. 742 of 2018** (unreported), **FINCA(T) Ltd and Another vs. Boniface Mwalukisa, Civil Application No. 589/12 of 2018**(unreported) and **Fortunatus Masha vs. William Shija and Another [1997] T.L.R. 154.**

In a reply filed on the 2nd of August,2022, Mr. Kidumage started by giving background of the case that, on 14th day of August, 2017, this Court in Land Case No. 28 of 2016, gave judgement in favour of the Respondent by upholding the decision of District Land and Housing Tribunal of Dodoma which declared the Respondent the legal owner of the suit land. The Appellant thereafter filed a notice of appeal to the Court of Appeal on 24th August, 2017 and Miscellaneous Land Application No. 113 of 2017 which was struck out on 25th January, 2017. On 08th day of April, 2019, the Applicant

again filed Miscellaneous Application No. 34 of 2019, which was withdrawn on 06th day of April, 2020 as it was an omnibus application. It was 73 days from the date of the decision. Again, on 11th May 2020, the Applicants instituted the present application after 35 days from the date of withdraw of Miscellaneous Land Application No. 34 of 2019. It was his further submissions that, the Applicant have not accounted from 14th day of August, 2017 to 11th day of May, 2020. On this, he cited the case of **Alhaji Abdalah Talib vs. Eshakwe Ndoto Kiweni Mushi [1990] T.L.R. 108** on the need to account for and explain each day of delay. He said that, there is an unexplained delay of 73 days between the striking out of Miscellaneous Application No. 113 of 217 and the institution of Miscellaneous Land Application No. 34 of 2019, and also 53 days between the date of withdrawal of Miscellaneous Land Application No. 34 of 2019 to the institution of the present application. He said therefore, the Applicants were negligent in preparing their pleadings and therefore the application has no merits and prayed the same be dismissed with costs.

I have dispassionately considered affidavit, counter affidavit and weighed submissions from both parties. To begin with, I wish to reiterate on the general principle that, whether to grant or refuse extension of time, it is

usually on Court's discretion which has to be exercised judiciously. In the case of **Lyamuya Construction Company Ltd vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported), it was stated that:

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that, discretion is judicial and so it must be exercised according to rules of reason and justice and not according to the private opinion or arbitrarily."

Therefore, in order for the Court to exercise its discretionary powers, the Applicant(s) has uncompromised duty to advance sufficient reasons to satisfy the Court to grant extension of time. In the case of **Juma Moses and Three Others vs. R, Criminal Appeal No. 145 of 2006**(unreported), the Court of Appeal held that, and I quote:

"In application of extension of time, the Applicant is expected to show that he was prevented by sufficient or reasonable or good cause and the delay was not caused

or contributed by dilatory conduct or lack of diligence on his part”

Furthermore, if the Court exercising that discretion see to it that there is any point of law of sufficient importance such as the illegality involved in the decision sought to be challenged, may extend time to file an application or appeal. See **Lyamuya Construction Company Ltd.** (supra). Regarding good cause, in the case of **Mohamed Suleiman Ghona vs. Mahmoud Mwemus Chotikungu, Civil Application No. 179/01 of 2020** it was held inter alia by the Court that: -

In determining if good cause has been disclosed, the Court has consistently taken into account considerations such as: -

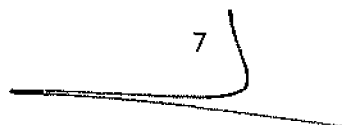
- i) The cause of delay involved;*
- ii) The length of the delay;*
- iii) The conduct of the parties;*
- iv) The degree of prejudice if any that each party suffers depending on how the Court exercises its discretion;*
- v) The need to balance the interest of a party who has constitutionally under pinned right of appeal, and*
- vi) Whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged.*

Back to the application at hand, the reason for the delay advanced by the Applicants is technical delay as stated in paragraphs 3, 4 and 5 of the affidavit quoted hereunder: -

3. That, the Applicants filed Miscellaneous Land Case Application No. 113 of 2017 before this Court applying for leave to appeal at the Court of Appeal within the time as provided by law. However, on 25/01/2019 the said application was struck out by this Honourable Court for citing wrong provision. A copy of the said Ruling dated 25/01/2019 is hereby annexed and marked as Annexure JK-3 and leave is craved to make it regarded as part of this affidavit.

4. That, after the application for leave to appeal at the Court of Appeal being struck out before this Honourable Court, by that time the Applicants was along out of time to file application for leave to appeal to the Court of Appeal as far as the ruling was delivered on 25/01/2019.

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5. *That, again the Applicants filed Misc. Civil Application No.....of 2019, but on 6th April 2020 the said application was withdrawn for having omnibus prayer before Hon. Siyani, J.*

6. *That, if the orders in the chamber summons are not granted, it shall be injurious to the Applicants since the delay to file an application for the leave to appeal at the Court of Appeal was associated by things beyond their control.*

The law is well settled that; technical delay is among grounds establishing sufficient cause in extending time to file an appeal or an application. See the case of **Fortunatus Masha** (supra), **Salvand K.A. Rwegasira vs. China Henan International Group Co. Ltd, Civil Reference No. 18 of 2006; Yara Tanzania Limited vs. DB Sharpriya and Co. Limited, Civil Application No. 498 of 2016** and the case of **Bharya Engineering and Contracting Company Ltd vs. Hamoud Ahmad @Nassoro, Civil Application No. 342/01 of 2017** (all unreported).

According to the above cited cases, the principle of technical delay essentially provides that, where a party timely files an appeal or any other matter in Court, but the Court strikes it out on grounds of incompetence, then that will be a sufficient cause for extension of time to file a competent application. This guidance, nonetheless, is subject to the fact that, the affected party should promptly move the Court soon upon the making of striking out order. It follows therefore that, the most relevant period of delay in considering the applicability of the doctrine of technical delay is the period between the date the previous matter was struck out and the date when the application for extension of time being under consideration by the Court was instituted. The Applicant must thus be diligent in pursuing his rights during this particular period.

Now, the sub issue at this juncture is whether or not the Applicants acted promptly in filing the present application upon the second application, that is, Miscellaneous Land Application No. 34 of 2019 withdrawn on 06th April, 2020. The present application was filed on 20th May 2020. By simple arithmetic, this application was filed after the expiry of 14 days from the date when the second application was withdrawn.

That said, since the Applicants banked their present application entirely on the doctrine of technical delay purporting to show that, it constituted sufficient ground for the prayed extension of time, I find this to be a sufficient cause for extension of time. I consequently allow this application. Time to file an application for leave to appeal to the Court of Appeal is extended for thirty (30) days.

It is so ordered.



Gerson J. Mdemu
JUDGE
26/08/2022

DATED at DODOMA this 26th day of August, 2022



Gerson J. Mdemu
JUDGE
26/08/2022.