

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 44 OF 2022

(Arising from Misc. Land Appeal Case No. 68 of 2018 of the High Court of Tanzania at Tanga)

HALFANI HASSANI.....APPLICANT

-VERSUS-

AHMAD BAKARI SHUGHULI.....RESPONDENT

RULING

Date of last order: 24/06/2022
Date of ruling: 04/07/2022

AGATHO, J.:

In the present application the Applicant seeks extension of time to file a Notice of Appeal to appeal to the Court of Appeal. The Application was brought under Section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] by way of Chamber Summons supported by an Affidavit of the Applicant. The Respondent protested by filing counter affidavit.

The Parties agreed to dispose the application by way of written submissions. The Court issued an order to that effect. The parties complied with that Order by filing their written submissions timely.

In supporting the application Noelina Bippa Ibrahim an Advocate who drew and filed submission for the Applicant had submitted while citing

the provision of Section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and explained the power of this Court to extend time. She also mentioned that the jurisprudence of our legal systems requires Applicant to show good cause for the delay, account for each day delayed and show diligence to remedy mistake.

She went further submitting that, the applicant is required to account for 685 days together with showing good cause for his delay from 27th December, 2019 when decision by Mruma, J was delivered and when the applicant was required to file his Notice of Appeal. The learned counsel tried to explain the meaning of "good cause" as the length of the day and the reasons for the delay and conduct of the parties. She also stated that another issue to be considered is whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged.

She further prayed to adopt the affidavit supporting the application. The counsel argued that applicant has two main sufficient causes for the application of extension of time to be granted. First ground is the technical delay since the Applicant initiated a wrong cause by filing Miscellaneous Application No. 1/2020 before Hon. Mkasimoingwa, J and Miscellaneous Land Application No. 45 of 2020 before Hon Dr. U.J. Agatho, J instead of filing a Notice of Appeal against Miscellaneous

Land Case Appeal No. 68/2018 followed by an Application for Leave to Appeal to the Court of Appeal. A second ground is the existence of a point of law of sufficient importance. The applicant was not afforded his right to be heard on both the raised Preliminary Objection and his concerns of not being supplied with submission in chief enable him to respond. Applicant appeal was not out of time as time for an appeal the party and time spent by a part waiting to be supplied with copies of rulings and judgment is automatically excluded.

Ms. Bippa went on arguing that in Land Appeal No. 95/2017 under Paragraph 3.5.7,8 and 9 of the judgement of the District Land and Housing Tribunal were availed to the applicant on 14th November 2018 and within five days the Applicant had lodged Misc Land Appeal 68 of 2018 unfortunately out of time as ruled by Mruma, J on 27th November 2019. The Applicant lodged Miscellaneous Application No. 1/2020 before Mkasimongwa, J and Misc Land Application No. 45 before Dr. U. J Agatho, J instead of filing notice of appeal.

What happened was termed by the Applicant's counsel as technical delay and she insisted that to be a good cause and cited the Case of **Fortunatus Masha V. William Shija and another [1997] TLR 154.**

She thereafter turned to the issue of counting each day of delay that is to say from 27th November, 2019 when the time to file Notice of Appeal

lapsed up to 20th October 2021 when this Application was filed. She stated that from 27th November, 2019 when ruling in Misc. Land Case Appeal No. 68/2018 delivered up to when Misc. Land Application No.1 of 2020 was filed. She submitted that on 27th December, 2019 the applicant was required to file Notice of Appeal, but being a layman he thought to obtain copy of ruling so that he can take it to those giving him legal advice. But on 5th January 2020 he was supplied with ruling in Miscellaneous Land Case Appeal No. 68/2018 make 39th day from the date of ruling pronounced. She cited Section 19 (2) of the Law of Limitation Act, [Cap 89 R.E. 2019] to support her submission, that since the Applicant was waiting to be supplied with the copies of ruling of Misc. Land Appeal No. 68/2018 for the purpose of extracting reasons of dismissing his appeal and required steps to be taken.

On the second ground she submitted while referring to paragraph 9 of the Affidavit that the Applicant within five days from the date after he was supplied with the copies of Ruling, filed Misc. Application No. 1/2020 on 10th January, 2020. That application though was struck out for being incompetent because he sought leave to appeal to the Court of Appeal as well as an order of the Court to vacate dismissal order in Misc. Land Case Appeal No.68/2018.

She further submitted on and prayed that 150 days to be excluded as the applicant from 10th, January 2020 Misc. Application No.1/2020 filed to 8th June, 2020 when the said application was struck out. This can be said that 150 days applicant was prosecuting Misc. Application No. 1/2020 which was a wrong cause. Relied on the Section 21(2) of the Law Limitation Act [Cap. 89 R.E 2019] and the case of **Hamisi Mohamed (As the Administrator of the Estate of the Late Risasi Ngawe) Vs. Mtumwa Moshi (As the Administrator of the Estate of the Late Moshi Abdallah) Civil APPL No. 407/17 OF 2019 Court of Appeal of Tanzania** (Unreported) and the case of **Elibariki Asseri Nnko Vs. Shifaya Mushi & Lewanga Kinando [1998] TLR No. 81.**

From 8th June , 2020 when Appl No. 1/2020 was struck out to 13th July when Application No. 45/2020 filed. It took 32 days to be supplied with copies of Order of Misc Application No. 1/2020 to be excluded under Section 19(2) of the Law of Limitation Act.

She proceeded to argue on another error committed by the Applicant for stating that, Applicant filed Misc. Application No. 45/2020 before this court and struck out on 27th September, 2021. She submitted that Miscellaneous Application No. 45 spent 441 days and that period of

prosecuting a wrong cause to be excluded as per section 21(2) of the Law of Limitation Act [Cap 89 R.E 2019].

She went on submitting that the applicant prosecuted wrong cause twice for that purpose he decided to look for the proper legal advice and on October 20th October, 2021 filed this Application which make 23 days later from the order of striking out Misc. Application No. 45/2020. From the sequence of the event its reasonable to exclude thirty days for the process of filing application of extension of time.

Having accounted for days delayed, the learned counsel of the Applicant turned to the issue of illegality. She submitted that the decision intended to be challenged contained two illegalities worth the Court of Appeal determination wit. She went on to submit that applicant was not afforded his right to be heard on both the preliminary objections raised and his concerns of not being supplied with submission in chief so that he could respond which he placed before the appellate court via a letter dated 21st August , 2019. Instead of affording the Applicant his right to be heard, the judge reasoned his way out without hearing both parties in order to decide.

She Cited the case of **Ally Ramadhani Kihyo Vs. The Commisioner for Customs Tanzania Revenue Authority and another , Civil Application No. 29/01 of 2018 Court of Appeal at Dar es Salaam**

and the case of **Christimas Elimikia Swai and Others Vs. Tanzania Electric Supply Co. Ltd and another, Civil Application No. 559/01 of 2018, Court of Appeal of Tanzania at Dar es Salaam** in supporting the point of illegality to be enough in the extension of time without counting the delayed days.

The learned counsel argued further that it is imperative for the Court of Appeal to consider the illegality in the decision and this Application paves way for such consideration. Luckily, in the present case the illegalities are apparent on the face of the record which require intervention and consideration of the highest court of the land so that there is no Miscarriage of Justice to the applicant who was a mere victim of his legal ignorance. On this point she referred the case of **Alex Senkoro and three others Vs. Eliambuya Lyimo (As Administrator of the Estate of Frederick Lyimo, Deceased) Civil Appeal No. 16 of 2017, Court of Appeal of Tanzania at Dar es Salaam** which requires automatic exclusion of days when the Applicant was waiting for copies of judgment or decree appealed from.

The Applicant's counsel submitted on the point that the applicant requested the tribunal to supply copy of the judgement and decree on 18th October, 2018 also complained to the Deputy Registrar for the delay via letter dated 09th November, 2018, as discussed in the case of

Alex Senkoro. The period from 18th October, 2018 to 14th November, 2018 was automatically excluded as required by Section 19(2) of the Law of Limitation Act and Misc. Land Appeal was not out of the time as ruled out, and in deed dismissing it was an illegality worth the court of Appeal Consideration.

The counsel argued that since the Respondent's Counter affidavit does not raise any prejudice he could suffer if this application is granted taking wisdom in **Mobrama Gold Corporation Limited Vs. Minister for Energy and Minerals and the Attorney General and East Africa Goldmines Ltd As Intervenor [1998] TLR 426**. Where it was held that:

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the applicant will not suffer any prejudice."

She concluded her submission by praying the court to extend time for the applicant as prayed.

In reply to the submission made by the Applicant, Respondent's counsel was very short and started to submit that the Applicant tries to hide in

the shade of technical delay which cannot be accepted here. It a position of law that ignorance of law is not an excuse. The wrong cause that were purported to have been taken by the applicant in previous applications were due to ignorance of law which cannot be considered as a good cause.

On the second point Respondent's counsel submitted that, the court persuaded to accept is that there was illegality in appeal on 68/2018. Strongly disputed and submit that, there was no illegality as seen from the ruling of Hon. Mruma, J the Applicant was given a chance to file his submission in reply but declined, alleging that he was not served with submission in chief. The whole story is of what transpired is clear in the ruling and insisting by stating there is no illegality.

In opposing this application applicant cited the case of **Daniel Steven Mwambo Vs. Mhadia Mashambe, Misc Application No. 42/2019, High Court of Tanzania Tanga Registry**, for the purpose of requirement of the sufficient reason for delay and must account for each day of delay.

Respondent concluding by stating that Applicant's application is calculated to disturbing the Respondent and they should be dismissed.

In rejoinder counsel of the applicant insisted on the technical delay, and that the Applicant is not ignorant of the law. The essence of technical delay is to excuse an Applicant who has been diligently fighting for his right via redress which he believed to be legally correct. To support her argument the learned counsel cited the case of **National Housing Corporation Vs. Jing Lang Li, Civil Application No. 432/17 of 2017 Court of Appeal of Tanzania at Dar es Salaam.**

She also rejoined on the second point of illegality by submitting that it need only to be apparent on the face of record. She argued that be as it may, whether the Applicant was served or not, declined to reply to the submission or not, he had a right to be heard on his queries. That right was openly denied, and the Judge continued to determine the appeal under the assumption that the Applicant for his own reason refused to reply. This is good cause to extend time so as the Court of Appeal can assess whether the applicant's right to be heard was infringed.

In examining what has been presented by the parties on this application for enlargement of time for the purpose of giving applicant room to file his notice of appeal as requirement for appealing to the court of appeal, several issues have been considered.

First, I should make it clear that it is the discretion of the court to grant extension of time as stated. In the case of **Alliance Insurance**

Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015 Court of Appeal of Tanzania, it was stated that,

"Extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favor of an extension of time."

But discretion vested to the Court in all circumstances when faces an application for extension of time is to be exercised with caution of reasonable cause and in maintainable circumstance. In simple words that discretion is not absolute since is exercised judiciously with condition of looking on the good and sound reason for said discretion to be effective. It is upon the applicant to count for each day of delay and to show reason for his delay and not otherwise. It is in that way this court can invoke its power to enlarge time. That duty is explained in the case of **Bushiri Hassan Vs Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, that:

"Delay of even a single day has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken." from the reason advanced by the applicants, I find

that they have not shown good cause and accounted for the delay to the standard required."

What amounts to good cause or sufficient circumstance for extension of time depends on the circumstance of a particular case. Hence, there are no exhaustive list of grounds for extension of time. In the case of **LAURENT SIMON ASSENGA vs. JOSEPH MAGOSO and two others, CIVIL APPLICATION NO. 50 OF 2016** Court of Appeal of Tanzania at Dar es Salaam, Massati J.A. noted that:

"What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case."

In trying to explain what good cause is, it may be a situation which is out of control of the applicant to the extent that applicant was not negligent, or he failed to act intentionally. One of the grounds that is maintainable by the court of law on the issue of extension of time is the illegality and technical delay.

Starting with the illegality as alleged by the applicant that he was denied the right to be heard when the court entertained the Preliminary Objection raised on appeal. The said PO was disposed by way of written

submission and the applicant (then the Appellant) failed to file his submission simply because he was not served with the Respondent's submission in chief supporting the Preliminary Objection. To quote the relevant part from the ruling of Hon. Mruma, J which alleged to have infringed upon the Applicant's right to be heard:

The Counsel for the Respondent filed his submission on 7th August, 2019 which was well within the time given to him. The Appellant did not file his reply as ordered and on 21st August 2019 which is six days before the expiry of the time allocated for him to file his submission, I therefore have no opportunity to have his side of the story regarding the complained delay and because as the time he wrote to the court he was well within time but instead of requesting to be supplied with a copy of the Respondent's submissions so that he could file his reply, he opted to inform the court that he will not respond because he is not served, I take it that he had no intention of filing a reply".

It was the standing of Mruma, J that the applicant was required only to apply to be supplied with the copy of submission from the court file for the purpose of preparing his reply. But instead, he decided to write a

letter for the purpose of informing the court that he had no intention to file a reply.

The applicant was irked by the Judge's failure to comply with the rules of the natural justice. One of the principles of natural justice is the right to be heard. For that reason, the applicant raised the issue of illegality as among the reasons for extension of time. In the Case of **The Principal Secretary, Ministry of Defence And National Service V Devram Valambhia [1992] TLR 387**, the Court of Appeal held that:

"A point of law of importance such as the legality of the decision sought to be challenged could constitute a sufficient reason for extension of time."

The same point was reiterated in the case of **Registered Trustees of BAKWATA versus The Registered Trustees of Dodoma General Muslim Association, Civil Application No. 512/03 of 2019, Court of Appeal at Dodoma**, whereby the Court of Appeal held that for the Court to grant extension of time it should be guided by the following factors:

1. *The applicant must account for all the period of delay;*
2. *The delay should not be inordinate;*

3. *The applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take;*
4. *If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

At this level my hands are tied to discuss what happened constitute a denial of the right to be heard or not constitute. Also, this court is not moved to discuss the merit of the issue of illegality as to do so will be to preempt the Court of Appeal to which the appeal lies from the decision of this Court.

Basing on what has been submitted by the applicant on the issue of illegality and right to be heard being one of most important rights in the administration of justice for that reason denial to enlarge time will be inappropriate especially if the respondent will not suffer any prejudice. That was stated in the case of **Montana Gold Company Ltd V. Minister for Energy [1998] TLR 426** it was held that:

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the applicant delay does not constitute a case of procedural

abuse or contemptuous and because the Respondent will not suffer any prejudice and extension should be granted."

It is my settled view that there is a need for extending time to enable the applicant to file his notice of Appeal to appeal to the Court of Appeal for the purpose of determining the issue of the right to be heard. I am saying so simply because the applicant complained of the denial of his right to be heard. That illegality is also apparent on record.

Regarding technical delay as a point for extending time, as rightly pointed out by the Applicant's counsel, technical delay simply means prosecuting a wrong cause. There is no doubt that applicant prosecuted wrong cause twice, to mention them Miscellaneous Application No. 1/2020 and Miscellaneous Land Application No.45 of 2020. The technical delay is maintainable for extension of time as recognized in the case of **The Director General LAPF Pension Fund v Pascal Ngalo, Civil Application No. 76/08 of 2018.**

"In the view of the account made by the applicant's counsel, the delay involved in this case was merely technical, and if there was negligence as submitted by the respondent, the applicant was penalized for it by having the matters decided against her."

However, considering that the Applicant prosecuted wrong cause twice, I asked myself as to whether the claimed technical delay may be determined in favour his to enable him to file notice of appeal out of time. In the case of **EMMANUEL RURIHAFI and JANETH JONAS MREMA Vs. JANAS MREMA Civil Appeal No. 314 of 2019, Court of Appeal of Tanzania at Dar es Salam** (unreported) stated that,

"At this juncture, it may be imperative to put it clear that, once established, as we have done that, the prosecution of the incompetent proceeding was a mere excusable technical delay in the sense that it was preferred timely and without negligence, the next question to be considered is whether the appellants acted promptly to take necessary steps to institute a competent proceeding".

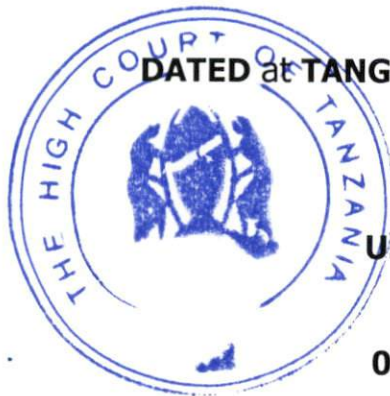
In considering what has been done by the Applicant after the first proceedings was struck out for being incompetent before the court on 8th June 2020, from there the Applicant was under the duty to take step of filing competent application. He had no room to commit another mistake or filing another incompetent application which is Miscellaneous Application No. 45/2020 that was struck out on 27th September 2021.

Although technical delay is applicable in our jurisprudence to enlarge time, for a party to enjoy that remedy he is under duty to take proper

action and not filing another incompetent application as done by the Applicant. It is on record that the Applicant's applications were struct out twice. It is trite that the second application must be competent one as per decision of the Court of Appeal in **EMMANUEL RURIHAFI and JANETH JONAS MREMA (supra)**.

In the end, I find this Application to be maintainable only on the ground of illegality which is a sufficient cause to extend time. I thus grant the application for extension of time. The Applicant is given 21 days from today to file his Notice of Appeal to appeal to the Court of Appeal. Each party to bear its own costs.

It is so ordered.



DATED at TANGA this 4th Day of July 2022.


U. J. AGATHO

JUDGE

04/07/2022

Date: 04/07/2022

Coram: Hon. Agatho, J

Applicant: Present

Respondent: Rodrick Kajala representative of Switbert Rwegasira
Advocate for

B/C: Zayumba

Court: Ruling delivered on this 4th day of July, 2022 in the presence of Applicant, and Rukia Ahmad Shughuli, Mariam Ahmad Kigwe (daughters of the Respondent) and Rodrick Kajala representative of Switbert Rwegasira Advocate for the Respondent.


U. J. AGATHO
JUDGE
04/07/2022

Court: Right of Appeal is available as per the law.



U. J. AGATHO
JUDGE
04/07/2022