

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO. 101 OF 2021

(Arising from the decision of this Court in Land Appeal No. 45 of 2020)

BETWEEN

SEREKA MASHAURI 1ST APPLICANT

FRANCIS SALILO 2ND APPLICANT

MAJURA MUGETA 3RD APPLICANT

VERSUS

AROBOGAST JOSEPH RESPONDENT

RULING

A. A. MBAGWA, J.:

This is an application for extension of time within which to file an application for leave to appeal to the Court of Appeal. The application was made by way of chamber summons made under section 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2017] and Rule 47 of the Court of Appeal Rules GN No. 368 of 2009. The chamber summons is accompanied by an affidavit sworn by applicants' counsel, John Manyama. The respondent filed a counter affidavit to contest the application.

The background facts which led to the present application can be recounted as follow; The respondent filed the land suit against the applicants in the District Land and Housing Tribunal for Mara at Musoma

in Land Application No. 23 of 2019. He claimed the applicants trespassed into his land. The respondent lost the suit. Later, the respondent successfully appealed to this Court in Land Appeal No. 45 of 2020. The applicants were aggrieved by the decision of this Court hence they filed an application for leave to appeal to the Court of Appeal in Misc. Land Application No. 16 of 2021. Unfortunately, this Court struck out the application for being incompetent for want of affidavit.

It appears the applicants have rectified the errors that led to the striking out of the first application and now they intend to seek leave to appeal to the Court of Appeal but they are out of time hence this application.

The deponent, in supporting affidavit, states that the date on which the ruling in Misc. Land Application No. 16 of 2021 was delivered was Friday i.e. 12th November, 2021. He proceeded that on 15th November, 2021 he travelled to Dodoma for official duties until 24th November, 2021. He deponed that following the official safari he could not attend to the need of the applicants to take necessary steps.

When the matter was placed for hearing before me the applicants had the services of Ms. Hellena Mabula, learned advocate whilst the respondent was represented by Mr. Ostack Mligo assisted by Noah Mwakisisile and Ms. Maula Tweve, learned advocates.

In her submission, Ms. Hellena adopted the affidavit of John Manyama and went on to submit that after the decision of Land Appeal No. 45 of 2020, the applicants brought an application for leave to appeal to the Court of Appeal but it was struck out due to legal issues that were raised by the respondent's counsel on the ground that the advocate who attested the affidavit was the one representing the applicants.

Ms. Hellena proceeded that the ruling was delivered on 12th November, 2021 and a copy of the ruling was received on 25th November, 2021. Hellena continued that the applicants counsel John Manyama got a journey from 15th to 24th November, 2021 thus he could not assist the applicants until 26th November, 2021 when he filed the present application.

Referring to the case of **Bank M (Tanzania) Limited vs Enock Mwakyusa**, Civil Application No. 520/18 of 2017 CAT at Dar es salaam at 9 to 10, Ms. Hellena was of the view that the application may be classified as technical delay because it was first filed within time but was struck out. In view of her submission, Ms. Hellena prayed the Court to allow the application.

In reply, Ms. Maula Tweve prayed and was granted leave to adopt a counter affidavit of the respondent to form part of her submission. She lamented that though John Manyama was not representing the applicants

in the Misc. Application No. 16 of 2021, he failed to attach any documents such as bus ticket or invitation letter to substantiate that he was truly on official safari. To bolster her argument, she cited the case of **Wambura N.J Waryuba vs The Principal Secretary Ministry of Finance & Another**, Civil Application No. 320/01 of 2020, CAT at Dar es salaam. The respondent's counsel added that the advocate could as well inform his clients to proceed with other advocates.

Ms. Tweve proceeded that the delay was due to negligence of both the advocate and his clients. She stated that the applicants had the duty to follow up their case. Regarding the advocate's negligence, Ms. Tweve was of the view that it was well discussed in the case of **Charles Marko Naibala vs Lilian Marko Naibala**, Misc. Civil Application No. 19 of 2020, HC at Moshi at page 12 and 13.

She further argued that, the applicants' counsel failed to establish by a document that the ruling was collected on 25th November, 2021 nor did he account for 13th and 14th days of November, 2021 as it is well discussed in the case of **Elfazi Nyatega & 3 Others vs Caspian Mining Ltd**, Civil Application No. 44/08 of 2017 CAT at Mwanza at page 10 & 11.

As regard to the case of **Bank M (Tanzania) Ltd (supra)** cited by the applicants' counsel, Mr. Mligo submitted that the case is distinguishable as in this case there was a delay from 12th November, 2021 when the

previous application was struck out. He added further that, the deponent did not disclose the source of information in respect of paragraph 2 for he did not prosecute the said application.

Upon probed by the Court, Mr. Mligo argued that if the application is granted, the respondent will be prevented from enjoying the land. And that it will open a pandora's box that everyone may at any time go to court. Mr. Mligo concluded his submission by praying this Court to dismiss the application with costs.

In her brief rejoinder, the applicants' advocate submitted that, the account for 12th and 13th days of November, 2021 was well established under paragraph 3 of the affidavit as it was the weekend since the ruling was delivered on Friday 12th November, 2021.

Regarding the knowledge of the facts, Ms. Hellena submitted that John Manyama was aware of what was going on because even the struck out application was prepared and filled by John Manyama.

As regard to the proof of journey (safari), the applicants' counsel contended that John Manyama could not tender bus tickets because he used a private car. She concluded by reiterating her prayers in chief.

Having heard the parties, the issue for determination is whether the applicant has assigned a sufficient reason for extension of time.

There is no hard and fast rule as to what constitutes sufficient reason. Good causes are determined based on the circumstances of each case. However, in determining the good cause courts have been invariably taking into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01/2018, CAT at Dar Es Salaam (Unreported).

In the application at hand, it has been demonstrated that the reasons for the applicants' delay are technical delay due to striking out of Miscellaneous Land Application No. 16 of 2021 and official safari of their counsel John Manyama. It has been deponed that the ruling in the former application was delivered on Friday of 12th November, 2021, thereafter on Monday i. e, 15th day of November, 2021 the applicant' counsel travelled to Dodoma on official duties up to Wednesday 24th November, 2021. And

upon collecting the ruling on 25th November, 2021 the applicants' counsel filed the present application.

In contesting the application, the respondent counsel argued that there was a negligence by the applicants' counsel. He contended that the applicants' counsel could have informed his clients to proceed with other advocates. Besides, the applicants' counsel failed to supply the Court with the documentary evidence that he truly travelled to Dodoma on official duties. Mr. Mligo was of the view that the counsel could have supplied the Court with the bus ticket and invitation letter to prove that he was on official travel.

As I pointed out above, there are various factors which the court takes into account to determine grounds for extension of time. It is true that in this application there is no sufficient proof that Mr. Manyama travelled to Dodoma as alleged in the affidavit. However, I have considered the applicant's constitutional right to appeal and the fact that the respondent would not be irreperably prejudiced should this application be granted. More so, I concur with the applicant's counsel that the first application namely, Miscellaneous Land Application No. 16 of 2021 was filed in time but was struck out on technical grounds. As such, the delay in filing the present application was due to striking out of the former application.

That said and done, I find the application meritorious and allow it. Consequently, the applicants are given fourteen (14) days from the date of this ruling to file the application for leave. Each party should bear its own costs.

It is so ordered.

Right to appeal is explained.



A. A. Mbagwa

JUDGE

12/09/2022

Court: The ruling has been delivered in the presence Mligo and Maula Tweve, advocates for respondent and in absence of the applicants this 13th day of September, 2022.



A. A. Mbagwa

JUDGE

13/09/2022