

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPLICATION NO. 35 OF 2022

(Arising from the judgment and decree of the High Court of Tanzania at Bukoba in Land Case Appeal No. 13/2013 and Originating from Land Application No. 205/2008 of the District Land and Housing Tribunal at Bukoba)

JOSEPHAT MWEMEZI BAKUZA.....APPELLANT

VERSUS

WINFRIDA MUKONO.....1ST RESPONDENT

LEONARD MUJAKI.....2ND RESPONDENT

RULING

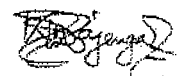
30th August & 30th August 2022

Kilekamajenga, J.

The instant application seeks for the following orders of this court:

- 1. That the Honourable court be pleased to extend time within which the applicant can file notice of intention to appeal to the Court of Appeal against the decision of this Court, Khaday, J. as she then was, in Land Appeal Case No. 13 of 2013.*
- 2. That the Honourable Court be pleased to extend time within which the applicant can apply for leave to appeal to the Court of Appeal to impugn the said decision.*
- 3. Costs of application.*
- 4. Any other order or relief which this Honourable Court will deem fit and pleased to grant.*

The application was made under **section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE 2019** and accompanied with an affidavit deposed by the



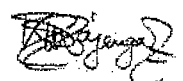
counsel for the applicant, Mr. Aaron Kabunga. In response, the respondents, through the legal services of the learned advocate, Miss Gisera Maruka lodged a counter affidavit resisting the application. The parties finally convened before this court for hearing of the application. In his oral submission, the learned advocate for the applicant, Mr. Frank John Karoli prayed to adopt the affidavit in support of the application. He argued further that, the applicant approached the Court of Appeal of Tanzania vide Land Appeal No. 17 of 2020. On 11th August 2021, the Court of Appeal discovered that, the certificate of delay accompanying the appeal was incompetent. The Court of Appeal allowed the applicant to correct the certificate of delay and lodge a supplementary record of appeal within sixty days. The applicant wrote a letter to the office of the Deputy Registrar requesting for the correct certificate of delay.

The Court of Appeal convened again on 26th November 2021 and realised that the applicant had delayed to file the supplementary record of appeal. The Court of Appeal thereafter struck out the appeal. Now, the only remedy available to the applicant was to file the instant application. To bolster his argument, the counsel for the applicant invited the court to the decision in the case of **The Director General LAPF Pension Fund v. Pascal Ngalo**, Civil Application No. 76/08 of 2018, CAT at Mwanza (unreported) where the Court of Appeal decided that, the time spent by the applicant when pursuing matters in court amounts to technical



delay. The counsel urged the court to grant extension of time for the case to be determined to its finality.

The counsel for the respondent, Miss Gisera Maruka resisted the application arguing that, the applicant, who was represented, could not have filed such an incompetent certificate of delay. She argued further that, the Appeal No. 17/2020 was struck out on 11th August 2021 and the applicant was given sixty (60) days to correct the certificate of delay. But, the applicant wrote the letter to the Deputy Registrar on 06th September 2021 and the sixty days lapsed on 11th October 2021. Thereafter, the applicant did not follow-up the case until the Court of Appeal convened on 26th November 2021 and his the appeal was struck out because the applicant had done nothing until that time. The applicant has now come before this court seeking extension of time to file notice of intention to appeal and leave to appeal to the Court of Appeal. The applicant filed an application for extension of time before this court but, the same was struck out for being incompetent; he filed the instant application on 21st March 2022. The counsel assailed the applicant for employing delaying tactics in order to deny the respondents the rights to enjoy the decree which was given in their favour in 2015. She prayed for the application to be dismissed with costs.



When rejoining, the counsel for the applicant insisted that the right to appeal is a constitutional right, therefore, the applicant should be allowed to approach the Court of Appeal of Tanzania.

This is one of the applications where this court is called upon to exercise its discretion on whether or not to extend time for the applicant to file notice of intention to appeal to the Court of Appeal and also lodge an appeal to the same court. The only reason to warrant the court to extend time is when the applicant has advanced sufficient cause or good reason to explain the delay. A good number of cases has expounded this principle of the law such as **Tanga Cement Co. v. Jumanne Masangwa and Another**, Civil Application No. 06 of 2001 (unreported); **Sospeter Lulenga v. Republic**, Criminal Appeal No. 107 of 2006, CAT at Dodoma (unreported); **Aidan Chale v. Republic**, Criminal Appeal No. 130 of 2003, CAT at Mbeya (unreported) and **Shanti v. Hindochi and Others** [1973] EA 207.

However, this unfettered discretion of the court must be exercised judiciously by not granting extension of time to applicants who, for their laxity and negligence, slept on their rights. In the case of **Tanga Cement Co. v. Jumanne Masangwa and Another**, (*supra*) the court had this to say:

This unfettered discretion of the court, however, has to be exercised judiciously, and the overriding consideration is that there must be 'sufficient



cause' for doing so. What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant.'

It follows therefore, the court, when exercising the discretion to extend time for the applicant, must consider several factors such as those stated in the case of **Tanzania Revenue Authority v. Tango Transport company LTD**, Civil Application No. 263 B of 2015 thus:

- (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;*
- (d) The degree of prejudice to the defendant if the application is granted.*

In the case of **Bishop Roman Catholic v. Casmir Richard Shemkai**, Civil Application No. 507/12 of 2017, CAT at Tanga (unreported), the Court of Appeal of Tanzania, added to the list of factors to be considered when the court intends to enlarge time thus:

- 1. That, the applicant must account for all period of delay.*
- 2. The delay should be inordinate.*
- 3. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

4. *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as illegality on the decision sought to be challenged.*

In the case of **Bushiri Hassan v. Latifa Lukio Mathayo**, Civil Application No. 3 of 2007, the Court of Appeal of Tanzania further emphasised that:

'...a delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.'

In the application at hand, as earlier stated, the applicant reached the Court of Appeal by way of Land Appeal No. 17 of 2020. Upon noticing the incompetence of the certificate of delay, on 11th August 2021, the Honourable Court of Appeal granted sixty days for the applicant to rectify the certificate of delay. On 06th September 2021, that means after the expiry of almost twenty five days, the applicant applied for a corrected certificate of delay and thereafter he did not follow-up the matter anymore. The sixty days granted by the Court of Appeal lapsed on 11th October 2021. When the Court of Appeal convened for another session on 26th November 2021, the applicant had done nothing in connection with the rectification of the certificate of delay. As a result, his appeal was struck out. Hence, the applicant filed the instant application. Honestly, I find the applicant and his counsel were negligent in following up this matter. It is a settled principle that omission or negligence of an advocate is not a good cause




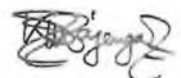
to grant extension of time. This position is stated in the case of **Transport Equipment Ltd v. D.P. Valambhia** [1993] TLR 91 (CA); **Umoja Garage v. National Bank of Commerce** [1997] TLR 109; **Inspector Sadiki and others v. Gerald Nkya** [1997] TLR 290.

In the upshot, I find the application failing to show sufficient cause for this court to enlarge time. In fact, the applicant is negligent or rather trying to use the court processes as a ploy to delay the rights of the respondent. I hereby dismiss the application with costs. It is so ordered.

Dated at Bukoba this 30th August 2022




Ntemi N. Kilekamajenga
JUDGE
30/08/2022



Court:

Ruling delivered this 30th August 2002 in the presence of the applicant and his counsel, Mr. Frank John Karoli (Adv), the respondents and their advocate, Miss Gisera Maruka, were also present. Right of Appeal explained to the parties.




Ntemi N. Kilekamajenga
JUDGE
30/08/2022

