

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

CIVIL APPLICATION NO 42/2019

(Originating from Land Application No 12 of 2019 of the High Court of Tanzania at Tanga.)

BETWEEN

DANIEL STEPHEN MBWAMBOAPPLICANT

VERSUS

MAHADIA SAIDI MASHAMBE.....RESPONDENT

R U L I N G.

MRUMA.J.

This is an application for extension of time within which the Applicant Daniel Stephen Mbwambo, can file a notice of appeal to the Court of Appeal to challenge the decision of this court (Mkasimongwa J.) in Miscellaneous Land Application No 12 of 2019.

The application is brought under section 11 (1) of the Appellate Jurisdiction Act (Cap 141 R.E 2002) and because the impugned decision originated from a Ward Tribunal Dispute No. 19 of 2017, this application was preceded by another application, that is Miscellaneous Land Application No 21/2019 in which the applicant was seeking for a certificate that a point of law is involved in the intended appeal. That application is still pending following dismissal of a preliminary objection against it.

It is now settled principle in our law that for the application for extension of time to succeed, the applicant must give sufficient good cause for his/her inability to file his appeal within the prescribed time by accounting for every day of delay.

In his affidavit in support of the application, the applicant pleads ignorance of the law as the reason for his delay to file his appeal to the Court of Appeal.

He stated under paragraph 4 of the affidavit that he filed a notice of appeal within prescribed time only to realize that he wrongly quoted a provision of law applicable in criminal appeals instead of civil appeals. The applicant did not elaborate as to when he realized that the first notice was defective and how long he took to withdraw it and file a fresh (the present) one. He did not annex annexures D1 and D2 to his affidavit as stated in paragraphs 4 and 5 thereof. Thus what is averred in paragraphs 4 and 5 is not supported by documents.

Secondly, on 3/9/2020 Mr. Yona Lucas, advocate who held brief of Mr. Rwegasira, advocate for the respondent informed the court that the respondent Mahadia Saidi Mashamba has passed away since July 2020. The applicant did not make any effort to have his application amended and implead the administrator of the estate of the Respondent. In terms of Rule 4 (1) of order XXII of the CPC, the applicant ought to have made an application to cause the legal representative of the respondent to be made a party, where no such application is made within the time limited by law (which time is 90 days in terms of the Law of Limitation Act), the suit abates as against the deceased respondent.

Thus as the applicant did not make any application to have the legal representative of the respondent to be made a party, this application has abated.

In summary therefore on top of failure to adduce sufficient and/or good cause of delay the application itself had abated. In the circumstance there is no way it can succeed. I therefore dismiss it with no orders as to costs as the respondent on whose favour Cost could be awarded is reported dead.




A. R. Mruma

Judge

07/02/2022

Date: 07/08/2022

Coram: A. R. Mruma – Judge


For the Applicant: Absent

For Respondent: (Mr Njowoka for Responding is on line)

Court clerk: Delpina

Court: Ruling delivered by video link this 7th day of February, 2022 in absence of the applicant.




A. R. Mruma
Judge
07/02/2022