

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO.331 OF 2021

**(Arising From the Decision of this Court (Rubama J) in Civil Appeal No. 33
of 1990)**

BETWEEN

KOMBO MKABARA.....APPLICANT

VERSUS

MARIA LOUISE FRISCH.....RESPONDENT

RULING

MRUMA, J

The applicant has filed Chamber Summons dated 19th May, 2021 in terms of Section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] seeking the following substantive orders:

- a. **That this honourable court be pleased to grant extension of time to the Applicant to file an application for leave to appeal to the Court of Appeal out of time;**
- b. **Any other reliefs as the court will deem just and fit to grant.**

The Applicant based his application on the grounds on the face of the Chamber Summons and sworn affidavit dated 12th July 2021. On the other hand, the respondent filed a replying affidavit opposing the

application. The gist of the applicant's averments to support his application revolves around the following reasons;

1. That after striking out of Civil Appeal No 83 of 2005, by the Court of Appeal on 10th July 2009, and lodging of an application for extension of time to file notice and application letter for correction of decree in Civil Appeal No. 33 of 1990, original court file was misplaced and the Application which was filed in August 2009 for extension of time could not be entertained for the same reason;
2. That after availability of the original court file which was misplaced in 2019, the Applicant filed Chamber Application for correction of decree and the decree was corrected accordingly;
3. That after getting valid decree, the Applicant filed Chamber Application for extension of time to file notice of appeal out of time and the same was granted on 6th April 2021;
4. That the Applicant couldn't file this Application unless an application for leave to file notice of appeal out of time has been sought and granted.

I have considered Chamber Summons and the affidavits in support and against the reliefs being applied for and it is all about exercise of discretion by this Court on whether in the prayers, the applicant has met the criteria and the principles of law to benefit as such to extend time. Being equitable reliefs, they are underpinned on well settled principles which guide the Court to decline or grant the applications in the case of **MICHAEL LESANI KWEKA Versus JOHN ELIAFYE (1997) TLR 152**, where the court held as follows on extension of time to file an appeal out of time:-1.

“The court had the power to grant an extension of time if sufficient cause had been shown for doing so”

Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court ought to exercise the discretion to extend time, is a consideration to be made on a case to case basis.

The time stipulation is a requirement of the law as clearly stated under **Rule 83(1) of the Court of Appeal Rules**. These rules are meant to achieve timely and orderly commencement, progress and proper determination of litigation of proceedings. Given the statutory limit, principally, the delay is inexcusable unless the applicant shows sufficient cause to justify the delay and that any such extension shall not prejudice the Respondent. In this regard, the discretion under Section 11(1) of the Appellate Jurisdiction Act is unfettered, but it has to be exercised judicially, not on whim, sympathy and caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors states in previous decisions of the Court of Appeal including but not limited to the period of delay, the reasons for the delay, the degree of prejudice to the Respondent if the application is granted.

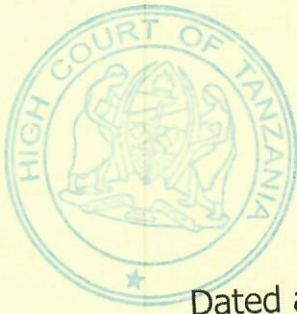
The legal authorities demonstrate that it is indeed a balancing exercise between the need for there to be a good reason for the delay and the prejudice that may be caused to the other party if the extension were granted. As stated hereinbefore extension of time being a creature of equity, one can only enjoy it if he acts equitably, he who seeks equity

must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

In the present application, I have given due attention to the issue of delay and prejudice which may be occasioned to the Respondent. In the present case, judgement was delivered on 18th February, 1992 and the Application to extend time was filed 19th May, 2021. From the evidence, the cumulative delay period is on or about 30 years and Seven months from the original time of 30 days stipulated in Rule 83(1) of the Court of Appeal Rules. The delay though inordinate has been explained by the applicant but may not be excusable given the fact that the Applicant didn't explain for every day of delay as stated by the court of Appeal in the case of **Lyamuya Construction Company Limited Versus Board of Registered Trustees of Young Women Association of Tanzania, Civil Application No. 2 of 2010 (CAT Arusha)**.

On the second tangent, I will stress the point on a particular prejudice likely to be occasioned by virtue of the fact that the Respondent will be deprived of the fruits of the judgment in respect of a case which I can fairly say that in pursuit of the appeal the Applicant should have made a proposal to deposit a security towards satisfaction of a decree in the event his appeal fails. Such security could have been say the current purchase price of the property the subject of this application or something near there. Otherwise in absence of such a proposal and given the period of 30 years that have elapsed since the passing of the decree in February 1992 I will exercise my discretion not to grant an extension of time sought.

In the circumstances, the application for extension of time is dismissed with costs to the Respondent.



A.R. Mruma,

Judge

3.10.2022

Dated at Dar Es Salaam this 3rd Day of October, 2022.