

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**MISC. LAND APPL. NO. 51 OF 2022**

*(Arising from land Case No. 23 of 2009)*

**IDRISA R. HAYESHI.....APPLICANT**

**VERSUS**

**EMMANUEL ELINAMI MAKUNDI.....1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY MINISTRY OF WORKS.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**MWANZA CITY COUNCIL.....4<sup>TH</sup> RESPONDENT**

**RULING**

**21<sup>st</sup> & 27<sup>th</sup> September, 2022**

**DYANSOBERA, J.:**

This is an application for extension of time for the applicant to lodge a notice of appeal to the Court of Appeal against the decision of this Court (Hon. Sumari, J.) in Land Case No. 23 of 2009 dated 14<sup>th</sup> February, 2014.

The time line of events for purposes of deciding this application is, briefly, the following. The 1<sup>st</sup> respondent purchased a piece of land from Noor Mohamed Elias on 29<sup>th</sup> March, 1982. The said piece of land is located at Plot No. 153 Block "Q", Nyerere road area within Mwanza City. On 29<sup>th</sup> March, 1982 he was handed over a certificate of title number 033022/146 and a survey plan. At the time of the 1<sup>st</sup> respondent's

purchase of the said piece of land, there were government quarters adjacent to the 1<sup>st</sup> respondent's premises. The 1<sup>st</sup> respondent and the applicant lived in the neighborhood adjacent to each other in the sense that while the 1<sup>st</sup> respondent was owning a house on Plot No. 153 Block "Q", the applicant owned a house on Plot No. 21B Block "Q", formerly owned by the government but sold to the applicant. It then turned out that the applicant trespassed the 1<sup>st</sup> respondent's piece of land and erected the structure thereat without his (1<sup>st</sup> respondent's) permission.

On 19<sup>th</sup> day of November, 2009, the 1<sup>st</sup> respondent instituted Land Case No. 23 of 2009 against the applicant but later, leave was granted whereby the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents were joined. The 1<sup>st</sup> respondent carried the day in the judgment handed down on 14<sup>th</sup> February, 2014.

The applicant was aggrieved by the decision and filed in the Court of Appeal Civil Appeal No. 105 of 2019 which was, however found to be incompetent for non-compliance with the requirement prescribed under rule 84 (1) of the Court of Appeal Rules. The applicant's appeal was struck out on 10<sup>th</sup> February, 2022 for being incompetent.

On 19<sup>th</sup> February, 2022 the applicant filed before this court (Kahyoza, J.) Miscellaneous Land Application No. 12 of 2022 requesting a grant of extension of time within which the applicant to lodge a notice of appeal against the judgment and decree of this honourable court by Hon.

Sumari, J made on 14<sup>th</sup> da of February, 2014. On 24<sup>th</sup> day of June, 2022, this court struck out the application for being incurably defective.

Unflinchingly, the applicant has again filed this application for extension of time within which to lodge a notice of appeal against the judgment and decree of this court.

At the time of hearing this application, Mr. Emmanuel John learned counsel stood for the applicant while Mr. Galati Mwantembe, learned Advocate represented the 1<sup>st</sup> respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents were advocate by Sabina Yongo learned State Attorney while for the 4<sup>th</sup> respondent stool Mr. Malick Mweneyami learned counsel.

Mr. Emmanuel John, after detailing a brief background of the matter, made the following submission in support of the application. He contended that for the whole the period the applicant was in court pursuing his rights which means that he did not sleep on his rights. In other words, Counsel for the applicant was confident that there was technical delay. To buttress this argument, he cited the case of **Fortunatus Masha v. William Shija and another** [1997] TLR at p. 154 on the actual delay and technical delay. It was his contention that the time spent by the applicant in pursuing his incompetent applications is technical delay which cannot be used to penalize the applicant after having his application struck out. He reasoned that the applicant cannot

be penalized twice as he has already been penalized by his application being struck out.

Strongly opposing this application, the learned Counsel for the respondent Mr. Galati Mwantembe, adopting the counter affidavit as part of his submission contended that the applicant is moving the court for extension of time to file notice of appeal to the Court of Appeal against the decision of this court dated 14<sup>th</sup> day of February, 2014 is late by eight years and seven months. He expressed that extension of time is not take automatic; the applicant must show good cause why he did not amount to good cause the necessary steps in time.

He noted that though there is no hard and fast rule as to what amounts to good cause, the Court of Appeal has laid down some factors. Reference was made to the case of **Alliance Insurance Corporation Ltd v. Arusha ART Corporation Ltd**, Civil Application No. 512 of 2016 (unreported) in which the court laid down the following factors:-

- (a) The applicant must account for all the period of delay,
- (b) The delay should not be inordinate
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action he intends to take

(d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance such as illegality.

Mr. Galati pointed out that these conditions are inclusive; a proof of one condition does not constitute good cause. He explained that the applicant lost his Land Case No. 23 of 2009 he had filed before this court. His appeal to the Court of Appeal was struck out on 11<sup>th</sup> February, 2022 due to the applicant's failure to serve notice to other parties affected by the appeal. Counsel for the respondent argued that, by so doing, the applicant went contrary to rule 84 (1) of the Court of Appeal Rules and that failure to observe Court rules is tantamount to fundamental negligence. Counsel for the respondent contended further that after the appeal was struck out, the applicant filed Misc. Land Application No. 12 of 2022 but which was also declared incompetent for having a defective affidavit.

That, after the appeal was struck out, he filed Misc. Land Application No. 12 of 2022 which was also declared incompetent for having defective affidavit. This amounts also to negligence conclusively, from 14.2.2014 up to now, and that the delay to lodge an appeal within time has been occasioned by the applicant. Being quite aware that in the case of **Masha**, the Court of Appeal differentiated between technical delay and actual delay, Mr. Galati highlighted that the delay will be

considered to be technical when the applicant is diligently pursuing his right in court. According to him, the circumstances in this case do not show any sign of diligence because the applicant initiated two defective proceedings in court, that is an appeal and an application.

The case of **Paul Martin Vs. Bertha Anderson**, Civil Application No. 7 of 2005 was cited on authority that negligence does not constitute sufficient reason to warrant the court's exercise of its discretion to grant extension of time.

Counsel for the 1<sup>st</sup> respondent further contended that parties have been in court for eight years at the instance of the applicant and that this shows that he was not diligent and acted with apathy or sloppiness. He was of the view that had the defects been committed once that would be one thing and the perpetual and repeated commission of the error implies that the delay of eight years is an ordinate delay.

He regretted that while the 1<sup>st</sup> respondent has a decree in his favour the applicant has blocked entrance of the house on pretext that he is pursuing his rights in court; an exhibition of arrogance which should not be allowed to delay justice on the ground of technical delay. This court was urged to dismiss this application with costs for lack of merits.

On her part, the learned State Attorney, Ms. Sabina Yongo representing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, as well, opposed the

application on the ground that the applicant has failed to show sufficient cause for his delay in filing a notice of appeal. Being aware that the power to grant or not to grant extension of time is under the discretion of the court she contended that the discretion has to be exercised judicially by taking into account the principles or criteria set out by courts. The case of **Vedastus Raphael v. Mwanza City Council and 2 Others**, Civil Application No. 59/08 of 2021 was cited so buttress her argument.

Learned State Attorney pointed out that there was negligence and lack of diligence. She stressed that negligence has never been a sufficient cause for the applicant to be granted extension of time and relied on the case of **Omary R. Ibrahim Vs. Ndege Commercial Services Ltd**, Civil Application NO. 83/01 of 2020 in which the Umoja case was referred to.

Submitting for the 4<sup>th</sup> respondent, Mr. Malick, learned Counsel, adopting the 4<sup>th</sup> respondent's counter affidavit as part of his submission, joined hands with what learned Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents had submitted. He contended that the application is out of time due to negligence by the applicant. He asserted that the applicant is intending to delay realization of the rights of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents by using the court as his hide out (*kichaka cha kujifichia*).

As was for Counsel for the 1<sup>st</sup> respondent, Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents prayed this application to be dismissed with costs.

In his short rejoinder, Mr. Emmanuel John refuted the argument that the applicant intends to delay the rights of the respondents arguing that even the applicant has the same right.

With regard to the applicant exhibiting negligence and lack of diligence, learned Counsel for the applicant sought to distinguish the cases cited by his fellow advocates insisting that the delay in this case was technical delay.

As to the argument that the criteria set out must go cumulatively, Mr. Emmanuel John was of the view that each criterion should specifically be applied to an individual case. He maintained that from 26.2.2014 up to 21.9.2022 the applicant had always been in court except the four days for which he has accounted as he was preparing the documents. He was emphatic that the applicant cannot be punished twice as having his application struck out, she should not also suffer in respect of this application.

Responding to the argument that the applicant blocks entrance of his client, Counsel for the applicant urged the court to find this argument irrelevant unless proper course is taken.



I have taken into account the rival submissions of the learned Advocates for the parties. I have also considered the applicant's supporting affidavit.

Established principle is that in applications like the present one, the court has discretionary powers to grant or not to grant extension of time and the duty of the applicant is to show sufficient cause to explain the delay and convince the court why it should exercise its discretion in his favour.

Admittedly, what amounts to sufficient cause has not, to date, been established. All depends on the circumstances of a particular matter. This position was also sounded by the Court of Appeal in the case of **Abdallah Salanga and Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 when it observed: -

"No particular reason have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application."

The question calling for determination is whether the grounds adduced by the applicant in his affidavit in support of the application as expounded by her learned Counsel constitute sufficient cause for grant of leave to file the notice of appeal out of the prescribed time. The main

ground advanced by the applicant for the delay is his pursuing matters in courts which he termed as technical delay.

With respect to the principle of technical delay, I am aware that the principle of technical delay was propounded by the Court of Appeal in the case of **Fortunatus Masha v. William Shija and another** [1997] TLR 154 (CA) where the Court had this to say:-

'A distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted'.

In that case, the single judge of the Court of Appeal held that the delay on the part of the respondent had been technical and not actual and that the original appeal, though incompetent, had been lodged in time. In other words, a distinction had to be drawn between cases involving real or actual delays and those which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted.

In the case under consideration, I have found as a fact that the applicant and his Counsel had been negligent in adopting the correct

procedure and this conduct could not constitute sufficient reason for the exercise of the court's discretion.

Here I wish to borrow the wisdom of the Supreme Court of India. Carr J. in **Su-Ling v. Goldman Sachs International**, [2025] EWHC 759 (Comm.), observed:

"Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so

It should also be emphasized that time spent by the parties pursuing matters must be in good faith and with due diligence so as to avert personal stress, physical exhaustion, increased legal costs and inconvenience. So, the ground of technical delay advanced by the applicant through Mr. Emmanuel John is misconceived and the case of **Fortunatus Masha v. William Shija and another** (supra) relied on by Counsel for the applicant is, in the circumstances of this case, inapplicable as the delay in this case, as amply demonstrated by Mr. Galati Mwantembe supported by Ms Sabina Yongo and Mr. Malick, the

was not technical, rather it was an actual delay caused by negligence and lack of diligence on part of the applicant.

Emphasizing on lack of diligence being one of the grounds for refusal of grant of extension of time, the Court of Appeal in the case of **Umoja Garage v. National Bank of Commerce** [1997] TLR 109 held that:-

Lack of diligence or an oversight is devoid of merit as a plea for extension of time.

To that end, I must conclude that the applicant has not demonstrated any good and/ or sufficient cause that would entitle him extension of time. In the result, this application fails and is, accordingly, dismissed with costs.

It is so ordered.



  
**W.P. Dyansobera**  
**Judge**  
**27.9.2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 27<sup>th</sup> day of September, 2022 in the presence of the applicant and Dr. George Mwaiondola, learned Counsel for the 1<sup>st</sup> respondent. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are absent.

  
**W.P. Dyansobera**  
**Judge**