

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. CIVIL APPLICATION NO. 26 OF 2022

(Arising from Civil Appeal No. 13 of 2018 of the High Court of the United Republic of Tanzania at Dodoma and Civil Case No. 03 of 2017 of the District Court of Singida)

SUSTAINABLE ENVIRONMENTAL

DEVELOPMENT ACTION (SEMA)..... APPLICANT

VERSUS

HUSSEIN MJILIRESPONDENT

RULING

05/09/2022 & 29/09/2022

This is the Ruling on the application for extension of time to file notice of appeal to the Court of Appeal of Tanzania (CAT) filed by SUSTAINABLE ENVIRONMENTAL DEVELOPMENT ACTION (SEMA) ("the applicant") to challenge the decision of this Court in Civil Appeal No. 13 of 2018. The applicant also prays for costs of the application to abide in the main cause as well as any other order(s) this Court may deem fit and just to grant.

The application which is made under section 11(1) of the Appellate Jurisdiction Act, Cap 341 R.E 2019 is supported by the affidavit of PHILEMON RAULENCIO, advocate for the applicant.

In the supporting affidavit it is stated, among other things, that the applicant being dissatisfied with the decision of this Court aforesaid, timely filed a notice of appeal to the CAT and applied to this court for certified copies of judgment, decree and proceedings. That, the applicant handed the letter filed in this court, applying for certified copies of judgment, decree and proceedings to one Herbert P. Majogo, being a Court process server, to effect service to the respondent. To prove this averment, the said Herbert P. Majogo has sworn an affidavit.

Further, it was deponed that the said Court process server successfully served the respondent with only the notice of appeal, via his advocate, but overlooked service of the letter mentioned above. That, such an omission of the said attachment was not noticed by the both the process server and the applicant until when the appeal was scheduled for hearing by the CAT, whereby a preliminary objection was raised by the advocate for the respondent on that omission.

It was further stated that on 6th May, 2022 the CAT did strike out the appeal for failure of the applicant to serve the respondent with the letter requesting for certified copies of judgment, decree and proceedings, as aforesaid.

Additionally, it was averred that a copy of the typed CAT Ruling of 6th May, 2022 had a typographical error, as it was dated 29th April, 2022 instead of 6th May, 2022. For that reason, the applicant had to make a quick follow up to the CAT for rectification of the Ruling, and she was issued with the rectified one on 7th June, 2022.

As the points of law acknowledged by this Court in Civil Application No. 26 of 2019 were still subsisting, the applicant still wished to pursue her appeal to the CAT and that, there were illegalities in the decision of the District Court of Singida as stated in the applicant's affidavit in Civil Application No. 26 of 2019, which required CAT's attention.

During hearing Ms. Zarina Nassoro, learned advocate, appeared for the applicant and Mr. Joseph Wawa also a learned advocate appeared for the respondent.

Ms. Nassoro prayed the Court to grant the application, stating that the respondent's advocate had intimated to her that the respondent's side would have no objection to the orders being sought. When called upon to address the court, Mr. Wawa readily supported the prayers made by her

learned sister, adding that the respondent would prefer to proceed with appeal on its merit.

Under section 11(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019], this Court is empowered to extend time for a party to give notice of intention to appeal. It is the discretion of the Court to so grant upon being satisfied that the reasons adduced by the applicant are sufficient.

I have, therefore, examined the reasons adduced in the supporting affidavit and it is my firm view that the delay was not due to negligence of the applicant. I hold so on account of the fact that, in the first place, the appeal was previously scheduled for hearing at the CAT, despite of being struck out for failure of the applicant to serve the respondent with the letter requesting records of this Court. Secondly; the applicant used a Court process server, being a reliable mode of effecting service to the applicant.

Therefore, the delay that ensued was technical as per the decision of the Court of Appeal in the case of **Fortunatus Masha v. William Shija and Another (1997) T.L.R 154** where it was stated that;

"..... a distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted".

[Emphasis Added]


It can be garnered from the above cited case, that an applicant has to act immediately after the pronouncement of an adverse ruling. However, in this particular case, the applicant has pleaded that there were yet another cause for delay, being the typographical error in the CAT Ruling, which had to be rectified first. The applicant was surely not to blame for this delay.

That said, I am satisfied that the applicant has adduced sufficient reasons for extension of time to be granted to enable her give notice of intention to appeal to the CAT as reasoned above. Accordingly, this application for extension of time to file notice of appeal to the CAT as well

as for leave to appeal to the CAT is granted. The two applications must be filed within respective time durations set by the law. Costs to follow event.

Dated at Dodoma this 29th day of September, 2022.




ABDI S. KAGOMBA

JUDGE