

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

AT MWANZA

MISC. LAND APPLICATION NO.100 OF 2021

MAYOMBYA MAHUGI APPLICANT

VERSUS

MADOSHI KIYENZE 1st RESPONDENT

ROBERT MLONGO2nd RESPONDENT

JOHN RWABUHANGWA3rd RESPONDENT

RULING

30th September & 21st October, 2022

ITEMBA, J.

The applicant herein was aggrieved by the decision of this court in Misc. Land Application no. 27 of 2020 and had for an application for extension of time to file notice of appeal out of time.

The application is filed under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and it is supported by the applicant's counsel's affidavit in which grounds for the request are stated. In the other side, the 2nd respondent has vigorously objected the application through his learned counsel's counter affidavit.

At the hearing, the applicant was represented by Mr. Julius Mushobozi while the 2nd respondent had the services of Mr. Egbert Mujungu, both learned advocates. The 1st respondent on whom service was affected, did not appear before the court. The 3rd respondent was in *absentia* since the beginning of the case at the trial tribunal.

The applicant's counsel submitted that the applicant is applying to file an appeal out of time before the Court of Appeal. He stated that the basic reason for the delay is that he was not aware when the decision intended to be challenged was delivered by the High Court. That, they became aware after being served with a bill of costs by the second respondent. He added that, hearing of the matter was on 1st June 2021 before Hon. Rumanyika J (as he then was, now the Justice of Appeal) and they were told that the date of ruling will be on court's notice. He referred this court to the impugned ruling which shows that it was delivered in the absence of both parties a state which supports his aversion that parties were not given the date of ruling. The learned counsel argued that on 23rd September 2021 they were served with the said bill of costs and immediately prepared the present application and filed it on 27th of September 2021, and that in between, there was a weekend. He argued further that, the 92 days

between the date of delivery of ruling and the date of receiving the bill of costs should not be counted as they were unaware of the existence of the impugned ruling. He finalized his submission by stating that, even the 2nd respondent's counter affidavit does not show that they were served with a notice of the date ruling.

In rebuttal, the counsel for the 2nd respondent stated that there is no sufficient ground established by the applicant warranting an extension of time. He submitted that the application was heard through teleconference due to the pandemic, both parties were present and when adjourning the matter, the presiding Judge was very clear that parties should collect their typed ruling on 30th June 2021 and they were able to collect theirs. He added that the applicant has not proved anywhere that he made efforts to follow up his case because even the ruling itself was on preliminary objection, hence he was negligent. He also stated that nevertheless, even the number of the days which the applicant had delayed are not accounted for. Therefore, the application should be dismissed with costs.

Those were the arguments from both sides. After considering the same, the issue is whether the applicant has shown a good cause for the extension of time to be granted.

Section 11(1) of The Appellate Jurisdiction Act provides that:

"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

There are no laid down variables or a clear definition of the phrase "good cause" when the court is exercising its discretion to grant an extension of time, however, there are factors which the court considers when determining this, as introduced by various decisions. These factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged. See the cases of **Dar es Salaam City Council vs**

Jayantilal P. Rajani, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (All unreported).

In the present application, the supporting affidavit particularly revealed that the reason for the delay is the applicant being unaware that the ruling was already issued as the court mentioned that the ruling will be issued upon notice, a fact which has been strongly disputed by the respondent.

Being guided by the principles mentioned above, the length of delay is 92 days which is more than three months. To start with, if a party has a pending ruling before the court it is unlikely that he will stay for 3 months without finding out the outcomes. I find this duration to be excessively long. Further, the reason for the delay was challenged by the respondent who stated that the date of collecting the copies of the ruling was made known for both parties. At the hearing, upon court's inquiry, both parties

explained that they did not have proceedings to support their rather conflicting versions. The court took the trouble to trace the records of the impugned application for the purpose of ascertaining as to what transpired during hearing and what was the court orders thereof and luckily the said records were located.

Based on proceedings, it turned out that, both parties were present at the hearing and the court ordered that the ruling will be issued on 30/6/2021. There are also records which show that the applicant, through the same advocate, did receive the copies of judgement and decree which he is intending to appeal against, since 23.7.2021. If that was not enough records show further that the applicant had already filed a notice of appeal before the Court of Appeal of Tanzania since 30th of July 2021.

Upon learning these new facts parties were recalled for the applicant to address on why filing the application for extension of time while there was a notice of appeal already filed originating from the same decision? Mr. Sekundi advocate, having consulted Mr. Muchunguzi advocate explained that Mr. Muchunguzi informed him that he does not remember to have filed any notice of appeal, however looking at the said notice, the signature

appears to be his, still it is not clear who took the copy of judgment and decree from the court. He asked the court to 'look at the circumstances and make its decision'. On his side, Mr. Mujungu advocate, stated that he has no reasons to doubt the court's records and he thought that under the situation, the application cannot survive. He prayed for the application to be struck out and the respondent be awarded costs as the applicant filed the application based on lack of seriousness.

I will briefly state that the reason for the delay advanced by the applicant is not supported by any records whatsoever. Records are clear that it was communicated to both parties that the ruling would be issued on 30th of June 2021. However, the applicant opted not to appear.

Therefore, the applicant cannot come before this court and claim that he was unaware of the ruling being issued. This conduct is a fit example of negligence on the part of the applicant's counsel, which cannot at all be relied as a ground for extension of time. Therefore, there is no sufficient ground given by the applicant for this court to warrant an extension of time.

If I have to mention, and with due respect, the conduct of the applicant's counsel misleading the court on what transpired before the trial court and filing double applications, be it an attempt for forum shopping, negligence or any other reason, it is highly discouraged. It is a total waste of respondent's and court's time, energy and resources and it does not reflect a good rapport of an advocate who is an officer of the court.

That being said, there is no sufficient cause established by the applicant for this court to extend time to file an appeal out of time.

The application is dismissed with costs.

It is so ordered.

DATED at **MWANZA** this 21st day of October, 2022.


L.J. ITEMBA
JUDGE
21/10/2022



Ruling delivered in the presence of Mr. Egbert Mujungu, advocate for the respondent who is also holding brief for advocate for Julius Mushobozi for the applicant.



L.J. ITEMBA

JUDGE

21/10/2022