

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO 45 OF 2022

(Arising from Land Application No 159 of 2021, District Land and Housing Tribunal
for Mara at Musoma)

BODI YA WADHAMINI KANISA LA

TANZANIA DELIVERENCE CHURCH 1ST APPLICANT

JOB EMANUEL MKAMA 2ND APPLICANT

ANDERSON KAWONGA 3RD APPLICANT

JOSHUA ARWA 4TH APPLICANT

ELIYA MSILA 5TH APPLICANT

VERSUS

KANISA LA FAITH ALIVE

CHRISTIAN CENTRE (FACC) RESPONDENT

RULING

26th October & 2nd November 2022

F. H. Mahimbali, J.

What troubles the applicants in this matter is why the trial tribunal
in application No 159 of 2021 when striking out the application on
incompetence did not grant costs

They first challenged it via Land Appeal No 13 of 2022 but for incompetence of the said appeal it was struck out. Amongst the reasons for the said struck out order was on the fact that the orders annexed to the petition of appeal were in confusion thus making the appeal incompetent. The strike out order was without an order for costs.

Upon rectification of the said orders and dully certified by the trial tribunal as dated 29/7/2022, the applicants have come up with this application seeking for an extension of time as to file appeal against the struck out order without costs.

As to why the application for extension of time be granted, Mr. Makowe learned advocate counsel for the applicants deposed as follows in his sworn affidavit, I quote the relevant part (paragraph 2 – 5):

2. That on 1/6/2022, this court struck out the appeal filed by the applicant herein above, the cause was that the appeal was against a wrong number of registration of a case. ...

3. That following the striking out of the appeal on; we asked the trial tribunal to rectify the record. The same was testified on 29/7/2022 ...

4. That I got knowledge of the certification of the record after procuring a copy thereof on 15/8/2022. I failed to

procure it before since the same could not be availed on ground that one could not ascertain.

5. That the delay was caused by an incorrect record, resulting from the errors of the trial tribunal.

The application has been contested by the respondent.

During the hearing of the application, the applicants as usual were under the legal representation of Mr. Makowe learned counsel, whereas the respondent enjoyed the legal services of Mr. Werema.

As to why the application should be granted, Mr. Makowe basing on the reasons in his affidavit submitted that the application be granted as the applicants have clearly stated the reasons why they failed to lodge the appeal timely following the incompetent records availed by the trial tribunal. He considered the delay as technical.

Further, upon rectification, they have filed this current application just after collecting the same.

On the other hand, in rebutting the application, Mr. Werema challenged the application as unnecessary and that it has no good reasons for its grant and has no accounting of the delayed days from 29/07/2022 to 15/8/2022. He considered the unexplained delay as

inaction by the counsel for the applicants. Each counsel provided authority for and against the application.

In my careful scanning of the submission and the filed affidavits for and against the application, the vital question is one whether there are sufficient grounds established for the grant of the application.

It is trite law that an application for extension of time is purely court's discretionary power. However, for it to be applied, the discretion must be judiciously exercised.

Now are there sufficient and sound grounds established for the grant of the said application.

I first agree that this court struck out the Land Appeal No 13 of 2022 preferred by the applicants on reason of incompetent appeal as it was accompanied by wrong documents. As they contained errors caused by the trial tribunal itself, it was ordered that the same be rectified. That was on 1/6/2022.

The applicants' counsel in his sworn affidavit, said rectified the copies were certified on 29/7/2022. However, he filed this application on 16/8/2022 having collected the same on 15/8/2022.

Why did he file if on 16/8/2022 and not immediately after the certification date which is 29/7/2022, Mr. Makowe deposed:

"That I got knowledge of the certification of the record after procuring a copy thereof on 15/8/2022. I failed to procure it before since the same could not be availed on ground that one could not ascertain"

Since affidavit is an evidence and must be self-proof, in the circumstances of this case I have not e-counteracted the contradictory evidence to rebut the applicants' counsel evidence. That said, the application is granted.

The applicants are at liberty to file their intended appeal to this court within a period of 45 days from today.

DATED at MUSOMA this 2nd day of November, 2022.




F. H. Mahimbali

Judge

Court: Ruling delivered this 2nd day of November, 2022 in the presence of both parties and Mr. Gidion Mugo – RMA.


F. H. Mahimbali

Judge