

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO 102 OF 2020**

(Arising from the Judgment of the High Court (Dodoma District Registry) Hon. L. Mansoor, J dated 4<sup>th</sup> September, 2020 in Land Case Appeal No. 62/2019, originating from Land Case Appeal No. 37/2019 of the District Land and Housing Tribunal for Iramba at Kiomboi, Original Land Case No.14 of 2018 at Mtoa Ward Tribunal)

**AZIZA KITILA ..... 1<sup>ST</sup> APPLICANT**

**SELEMANI MPINGA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**GRACE GYUNDA ..... RESPONDENT**

**RULING**

*Last Order: 16/11/2022*

*Ruling: 02/12/2022*

**KHALFAN, J.**

The applicants have applied for extension of time upon which they may file leave to the Court of Appeal of Tanzania. The application is made under Section 11 (1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019], and supported by the affidavit of Aziza Kitila and the affidavit of Selemani Mpinga.



The brief facts leading to this application are such that the first and second applicants are aggrieved by the judgment of this Court in Land Case No. 62 of 2019 on which they have preferred this application.

When the matter came for hearing, Mr. Mussa Chemu, learned advocate, appeared for the applicants, and the respondent, Ms. Grace Gyunda appeared in person unrepresented. The main issue to be determined is whether the applicants has shown sufficient cause warranting the grant of extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania.

In his submission, Mr. Musa Chemu started by adopting the affidavits of both applicants. He submitted that the applicants (by then appellants) were legally represented by Mr. Thomas Ligola, learned Advocate in the matter whose decision was delivered on 4/9/2020.

He further submitted that, the said Advocate did not inform the applicants about the delivery of the said decision, despite the fact the applicants have been inquiring about the status of the said matter. He contended that, having followed up on the status of the matter, the applicants realised that the decision had already been made.



With such knowledge, the applicants decided to consult Mr. Emmanuel Sululu, learned Advocate. On 28/9/2020, Mr. Emmanuel wrote a letter requesting for the court proceedings from the registrar in order to initiate necessary steps for appealing to the Court of Appeal. He averred that, the said proceedings were received by the applicants on 06/10/2020, when the time within which they could have lodged application for leave to appeal to the Court of Appeal had already expired.

He argued that, the applicants have an intention to appeal before the Court of Appeal. It is for such reason he stated that, they brought this application before this Court to seek extension of time. He cited Article 13 (1) (a) of the United Republic of Tanzania Constitution of 1977, as amended from time to time, to amplify his argument on the right to be heard as the applicant's fundamental right. He insisted that, the delay for them to file an application for leave was caused by the Advocate whom did not inform them earlier.

He referred to the case of **Ghania J. Kimambi vs. Shedrack Ruben Ng'ambi, Misc. Application No. 692 of 2018**. This case illustrated on the right to be heard. It also clarified that; the fault done by the Advocate





should not be construed to punish the parties whom the advocate is legally representing.

He illuminated that, the said case which he cited, applies to this matter, since the Advocate is the one who caused the applicants not to file on time and so he prayed for this application to be granted.

Ms. Grace Gyunda, in her reply to submission disagreed in toto what was submitted by the applicants. She insisted that, the decision made was fairly done and not otherwise. She argued that the reasons for the advocate's delay which attributed for the applicants' delay to file their application is not true. She ended her submission by submitting that, the applicants are delaying this process unnecessary.

According to the learned Advocate for the respondent, such act is an abuse of the court process by wasting time in bringing this application before this court. She insisted that, this application has no merit and that, the property belongs to her which she has inherited from her father, and which she owns lawfully.

In his rejoinder, Mr. Mussa Chemu reiterated briefly by emphasising the reasons for delay which he submitted earlier in his submission in chief.



I have carefully considered the affidavits of the applicants, the counter affidavit of the respondent as well as the rival submissions from both sides. The issue before this Court is whether the application has merit. Mr. Mussa Chemu cited the case of **Ghania J. Kimambi vs. Shedrack Ruben Ng'ambi, Misc. Application No. 692 of 2018**, which relied on the right to be heard. It has been argued that, the delay for filing the application for leave was caused by the former advocate who was representing the applicant earlier. The said advocate did not inform them the status of their case, even when the judgment was delivered. This reason was disputed by the respondent in her oral submission as was in paragraph 7 of her counter affidavit. In the said paragraph of her affidavit, she stated that:

*"That the 1st Applicant and her advocate are simply trying to cover up for their negligence and delay in following up the set of procedures of law..."*

During the hearing, she stated that she is against both the applicants' arguments who were represented by Mr. Mussa Chemu.

Nevertheless, in the case of **Ghania J. Kimambi vs. Shedrack Ruben Ng'ambi, Misc. Application No. 692 of 2018**, at page 3, the court stated



*that, 'it is a basic law that, no one should be condemned to a judgment passed against him without being afforded a chance of being heard.'*

It is clear that in the above case which was relied on by Mr. Mussa Mchemu, emphasis was drawn on observance of principles of natural justice.

Applying the above position of the law, I revisited the parties' submissions for and against the application. The applicants submitted that; it was as a result of the fault of the Advocate that they delayed to apply for leave to appeal. Although there was no affidavit justifying such allegation against the learned advocate, the fact remains that the applicants should not suffer as a result of the negligence or fault of their advocate.

Owing to the circumstances herein, the applicants are hereby granted extension of time to file leave to appeal within 30 days. Under the circumstances of this application, I grant no order as to costs.

**DATED and DELIVERED** at Dodoma this 02<sup>nd</sup> day of December 2022.



  
**F. R. Khalfan**  
**JUDGE**