

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPLICATION NO. 42 OF 2022

(From the High Court of Tanzania at Mbeya in Land Appeal No. 56 of 2019. Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 73 of 2017)

CATHERLINE O. AMBAKISYE.....APPLICANT

VERSUS

MARIA SYANGYOMBO.....RESPONDENT

RULING

Date of Hearing: 27/10/2022

Date of Ruling : 22/12/2022

MONGELLA, J.

In this application, the applicant is seeking to be granted extension of time to file an application for leave to appeal to the Court of Appeal. He seeks to impugn a decision of this Court (Ebrahim, J.) rendered in Land Appeal No. 56 of 2019. The application is made under section 11 (1) of the Appellate jurisdiction Act, Cap 141 R.E. 2019 and supported by the affidavit of the applicant, Catherine O. Ambakisye. It was argued orally by the learned counsels for both parties.



In the submission by Mr. Pacience Maumba, for the applicant, it was submitted that the application emanates from a land dispute on Plot No. 83 Block 46 Majengo area within Mbeya City with title deed no. 9897 of 18.08.2006. He said that the case was filed in the Tribunal by the respondent claiming that the land was hers. This was through Land Application No. 73 of 2017 in which the Tribunal ruled in favour of the applicant. The respondent then appealed to the High Court through Land Appeal No. 56 of 2019. The High Court quashed the Tribunal decision and ruled in favour of the respondent. Dissatisfied, the applicant filed Misc. Land Application No. 77 of 2021 seeking for leave to appeal to the Court of Appeal. On 01.06.2022 the application was struck out by this Court due to irregularities in the supporting affidavit. That, the irregularity was to the effect that the affidavit was attested by the advocate who prepared and filed the affidavit. In the premises, the applicant had to file the application at hand because the time to file for leave to appeal has elapsed and she still wishes to appeal to the Court of Appeal.

Arguing further, he submitted that the application that was struck out was filed within time but the mistake was done by the advocate by attesting the document he prepared. He contended that the mistake was not intentional. While noting that the mistake of the advocate cannot be used as a reason for extension of time, he urged the Court to consider. He urged the Court to be guided by the decision in the case of **Kambona Charles vs. Elizabeth Charles**, Civil Application No. 529/17 of 2019.

He explained further that after the application was struck out they requested for copy of ruling of the Court and copy of drawn order. The



copies were availed to them on 14.06.2022 whereby they were able to file the application at hand on the same date. He prayed for the Court to consider the application and grant the extension of time sought.

The respondent was represented by Mr. Dickson Mbilu and Mr. Ladislaus Rwekaza. Mr. Mbilu started to address the Court whereby he opposed the application on the ground that the applicant has failed to advance sufficient cause to be granted the extension of time. He argued that extension of time is within the discretion of the court, but the discretion is to be exercised judiciously by considering sufficient cause. He referred the case of **Jubilee Insurance Co. Ltd vs. Mohamed Sameer Khan**, Civil Application No. 489/01 of 2020 in support of his position.

Referring further to the case of **Cosmas Faustine vs. Republic**, Criminal Application No. 74/04 of 2019 he stated the factors to be considered in granting extension of time to be: reason and length of the delay; accounting for each day of the delay; absence of negligence or sloppiness in preferring the application; and existence of an issue of illegality. Considering these factors, he contended that the applicant has failed to meet the conditions set out in that case. He challenged the reason advanced by the applicant arguing that it was negligence and the same does not amount to sufficient cause.

In addition he insisted that the applicant has failed to account for each day of the delay. To buttress his point he referred the case of **Golden Crescent Assurance vs. Yusta Ezekiel Njau**, Misc. Civil Application No. 01 of 2020 (HC at DSM); and that of **Exim Bank (T) Limited vs. Jackline Kweka**,



Civil Application No. 348/18 of 2020. He further challenged the applicant's contention that he applied for copy of ruling of the court on the ground that no such letter was attached to support his assertion.

Mr. Rwekaza as well submitted briefly in opposition to the application. He started by challenging Mr. Maumba's reliance on the case of **Kambona Charles** (supra) arguing that in that case it was never ruled that the negligence of an advocate can be a reason for extension of time. He said that the Court in that case considered the environment of the case whereby the advocate furnished exhibits proving that he was engrossed in special assignments. That the Court, at page 7, specifically stated that negligence cannot constitute a good reason for extension of time. On those bases he found the case distinguishable from the one at hand as the advocate who committed the mistake came from the Chambers of Mr. Maumba rendering the mistake his as well. He was of the view that if this is allowed a Pandora box shall be opened whereby each advocate will be making mistakes and shielding under this ruling.

As to the claim of illegality, he argued that the applicant's supporting affidavit has not stated any illegalities, but issues that ought to be the subject of the leave to appeal. He also prayed for the application to be dismissed with costs.

In rejoinder, Mr. Maumba disputed saying that the advocate was negligent. He said that what he stated was that the advocate made a mistake accidentally rendering the case of **Kambona Charles** (supra) relevant to the case at hand. He maintained his point that the application

that was struck out was filed within time and they acted promptly in filing the application at hand, which was on the very same day they obtained the copies of the ruling. He challenged the cases cited by the respondent's counsels saying that they discussed Court of Appeal Rules thus inapplicable in the matter at hand.

I have duly considered the arguments by the counsels for both parties. I agree with the learned counsels that extension of time is within the discretion of the Court exercised judiciously in consideration of sufficient reasons advanced by the applicant on his delay. See: **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (CAT, unreported); and **Jaluma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (CAT, unreported). The burning question is therefore whether the reason advanced is sufficient to warrant this Court to grant the extension sought.

The applicant advanced one main reason to the effect that her application for leave to appeal was struck out due to an irregularity in the supporting affidavit. The irregularity was occasioned by her advocate who prepared the affidavit and attested it. Considering the state that the initial application was struck out on an irregularity, I find that the applicant is under technical delay. The application of the principle of technical delay is coupled with a condition to the effect that when wrongly pursuing his/her claim, the applicant must have acted within time limitation. See: **Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference no.18 of 2006 (CAT, unreported); **Luhumbo Investment Limited v. National Bank of Commerce Limited**, Misc. Civil



Application No.17 of 2018 (HC at Tabora, unreported) and **Mohamed Enterprises (T) Ltd v. Mussa Shabani Chekechea**, Misc. Civil Application No. 81 of 2017 (HC at Tabora, unreported).

The respondent's counsels found the applicant failed to advance sufficient reasons for the delay as she failed to account for each day of the delay. However, under technical delay what is considered is the time the applicant wasted after his/her matter was struck out in court. That is the time the applicant is bound to account for. In the matter at hand, the applicant explained that she waited for copies of the ruling striking out her application and filed the application at hand on the very same date the copy of the ruling was issued. Mr. Mbilu challenged the applicant on the ground that she presented no letter she wrote requesting for the copy of the ruling. I find the same would have been relevant if there was a dispute as to the dates the ruling was ready for collection and whether the applicant had delayed collecting the same. That is however not the case in the matter at hand.

The irregularity that placed the applicant on technical delay was caused by the actions of her advocate attesting her supporting affidavit. The respondent's counsels found the same unacceptable and not constituting as sufficient ground in being granted extension of time. Mr. Rwekaza argued so explaining the holding of the Court in the case of **Kambona Charles** (supra). However, I find the learned counsels read the decision of the Court in piecemeal. This is because, while noting the position as argued by Mr. Rwekaza, the Court further noted that the mistakes of an advocate can be considered in relation to his/her general



conduct in the case. That is, whether the advocate has committed gross negligence or has repeated the mistake several times. The Court revisited its decision in the case of **Zuberi Mussa vs. Shinyanga Town Council**, Civil Application No. 3 of 2007 (unreported) in which it held:

"Advocates are human and they are bound to make mistakes sometime in the course of their duties. Whether such mistakes amount to lack of diligence is a question of fact to be decided against the background and circumstances of each case. If, for instance, an advocate is grossly negligent and makes the same mistake several times, that is lack of diligence. But if he makes only a minor lapse or oversight only once and makes a different one next time that would not, in my view, amount to lack of diligence."

In the matter at hand, I find the respondents' counsels failed to show how the mistake committed by the applicant's advocates amounted to gross negligence and whether the learned counsels committed the mistake repeatedly in the matter at hand. I also find nothing to place them in these characters. Having said all I grant the application as prayed. The applicant is given 21 days from the date of this Ruling to file the application for leave to appeal to the Court of Appeal.

Dated at Mbeya on this 22nd day of December 2022.




L. M. MONGELLA

JUDGE

Date: 22/12/2022

Coram: A. P. Scout, Ag. DR.

Applicant: Absent

For the Applicant: Mr. Maumba - Advocate

Respondent: Present

For the Respondent Ms.Tumaini - Advocate

B/C: Mapunda


Mr. Maumba Advocate for the applicant and Ms. Tumaini Advocate holding brief of Mr. Rwekeza Advocate for the respondent who is present. The matter is coming on for ruling we are ready to proceed.

Ms. Tumaini Advocate:

We are ready too.

Court: Ruling is delivered in the presence of Mr. Maumba Advocate for the Applicant, absent of the applicant, Ms. Tumaini Advocate for the Respondent, Respondent and Court Clerk in chamber Court on 22/12/2022.




A.P. Scout
Ag. DEPUTY REGISTRAR
22/12/2022