

**IN HIGH THE COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISC. LAND APPLICATION NO.15 OF 2021

(Arising from the High Court of Tanzania at Mtwara in Land Appeal No. 11 of 2017 and originating from the District Land and Housing Tribunal for Mtwara in Application No.7 of 2013)

BETWEEN

ABDALLAH ABDALLA NABARAKA.....APPLICANT

VERSUS

HAMISI ALLY ATHUMAN (Administrator of the estate of
the late **SALUM MANDAI CHIPANDE**)**RESPONDENT**

RULING

Date of Last Order: 8/3/2022

Date of Ruling: 21/4/2022

LALTAIKA, J.:

The applicant, Abdallah Abdalla Nabaraka, is moving this court under section 11(1) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] to extend time within which to file a Notice of Appeal and leave to appeal to the Court of Appeal of Tanzania out of time. His application is supported by his own affirmed affidavit expounding on circumstances and reasons for the delay.

The factual background leading to this application can be briefly gleaned from his affirmed affidavit. The applicant filed Application No.7 of

2013 at the District Land and Housing Tribunal for Mtwara and prayed to set aside ex-parte judgment delivered on 4/9/2013. Upon hearing his application was dismissed he appealed to this court vide Land Appeal No.11 of 2017 which was also dismissed. Aggrieved, the applicant lodged his appeal to the Court of Appeal Tanzania. When his appeal was called on for hearing on 2/6/2021 the applicant withdrew it as he thought, in his opinion, it was incompetent.

At the hearing of this application, the applicant appeared in court along with his counsel Mr. Kassian Ally Mkali, learned Advocate. The respondent, on the other hand, appeared in person, unrepresented. Mr. Mkali initiated the hearing and submitted that the application was supported with the affidavit of the applicant which he prayed that it is adopted and made part of his submission.

The learned counsel started off by giving a brief background of the application. He averred that the prayers being sought were granted by Hon. Ngwembe, J. on 12th April 2019. Thereafter, he filed a memorandum and records of appeal to the Court of Appeal on the 17th of October 2019. Mr. Mkali went further and urged that the said appeal was scheduled for hearing in June 2021. As he entered appearance though it came to his attention that the appeal missed a necessary attachment namely certificate of delay which resulted into incompetent appeal.

Upon such realization, Mr. Mkali submitted further, he prayed before the Justices of Appeal to withdraw Civil Appeal No 153 of 2020 so that he could refile it with the necessary attachments. It is Mr. Mkali's submission that after the withdrawal it came to his knowledge that he could no longer

proceed to the Court of Appeal of Tanzania without being granted extension of time by this court out hence this application.

In response, the respondent submitted the application was merely caused by negligence of the applicant which started all the way from the District Land and Housing Tribunal. He stressed further that the applicant was now using the learned Advocate for what he negligently failed to pursue. The respondent went further and argued that the applicant had the opportunity to pursue the matter.

The respondent submitted further that he believed that the law in our country had set down criteria for extension of time. It is the respondent's submission that for an extension of time to be granted, exhibits proving sickness had to be produced. In addition, the respondent argued that he believed the court was being subjected to wasteful streetwise talks.

The respondent went on to submit that in his opinion, the three prayers brought forth by the applicant were not worthy of reaching the Court of Appeal. He averred that the Court of Appeal is a serious Court which cannot be subjected to such petty cases as this. The respondent prayed that this court reduces the workload of the Justices of the Court of Appeal by not granting leave for cases like these which, in his opinion were based on street talk "*mambo ya mtaani*."

The respondent provided further that in his opinion, it was upon this court to separate chaff from grain since he had been disturbed unfairly. In that regard, the respondent argued that he had been incurring a lot of costs thus he prayed this court to order the applicants to pay for the costs. Also, the respondent argued this court to take cognizance that the

orphans of the late Chipande think that their rights have finally been addressed. The respondent emphasized that he had been psychologically affected and so have the orphans thus, argued this court to dismiss the matter.

In rejoinder, Mr. Mkali submitted that it was a matter of law that a person who is dissatisfied appeals to the next level in the court hierarchy. In line of that argument the learned Counsel submitted that on the 30th October 2018 Mr. Nabaraka wrote a notice of appeal to the Court of Appeal and served the same to the other party. However, Mr. Mkali averred, the respondent didn't follow the practice when he wrote a letter to the Deputy Registrar and received a reply on 26th June 2019 that there was nothing pending in court with regards to the matter at hand.

The learned Counsel argued that the Deputy Registrar had erred because the notice had already been lodged and was assigned a number 57 of 2018. Moreover, Mr. Mkali argued that the same Deputy Registrar on 18th April 2019 had received a letter from Felicity Attorneys titled Certified Copies of Judgement, Decree and Proceedings for Appeal Purposes in Appeal No. 11 of 2017. Mr. Mkali emphasized that the letter was written on the 18th April 2019 after leave was granted by Ngwembe J on 12th April 2019. The learned Counsel opined that the registrar was not justified in declaring that there was no matter pending. To this end, Mr. Mkali prayed that the letter of the Deputy Registrar be expunged from the court records since he had overlooked documents in his own registry that were waiting for his attention.

Having heard the submissions from both parties, I am inclined to determine the crux of the matter in this application namely viability of

extension of time to lodge a notice of appeal and leave to appeal to the Court of Appeal of Tanzania out of time. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse and that, extension of time may only be granted where it has been sufficiently established that the delay occasioned has been accounted for with sufficient and/or good cause.

In the instant application, the reason for the delay as relied by the applicant are featured under paragraph 6 as emphasised by the applicant under paragraph 13 of his affirmed affidavit. A quick read through the cited paragraph reveals the reason for delay as, "That My appeal came for hearing on 2nd June, 2021 and I withdraw(sic) my appeal for it was deficient with some document which was supposed to be issued from the court". Contents of paragraph 13 appear as follows, "That is for the interest of Justice that the ground set forth under paragraph 6 hereinabove be considered as grounds warranting consideration by the Court of Appeal and therefore the orders prayed for the chamber summons be granted."

In view of the nature of this application in general, I have directed my mind to the principles guiding this court in applications for extension of time to file a notice of appeal and leave to appeal to the Court of Appeal out of time as echoed in the case of **Lyamuya Construction Co. Ltd. vs. Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4, the Court put the following guidelines for granting an application for extension of time as follows:-

"(i) The applicant must account for all period of delay

- (ii) The delay should not be inordinate
- (iii) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action he intends to take.
- (iv) If the court feels that there are other sufficient reasons, such as the illegality of the decision sought to be challenged."

Before going to evaluate if the applicant has advanced sufficient or good cause for granting him an extension of time to lodge a notice of appeal and leave to appeal to the Court of Appeal out of time, it is imperative at this stage to know what amounts to good or sufficient cause. Doing that, I should make it clear that the term good or sufficient cause has not been defined by our law but the Court of Appeal in the case of **Regional Manager, Tanroads Kagera vs. RUAHA Congrete Company Ltd.**, Civil Application No.90F (unreported) the Court elaborated that: -

"Sufficient reasons cannot be laid down by any hard and fast rule.

This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend time."

Being aware of what amounts to a good or sufficient cause now let this court find out if the applicant has explained any sufficient or good cause which will make this court exercise its discretionary power to grant an extension of time to lodge his notice of appeal and leave to appeal to

the Court of Appeal out of time as guided by the principles enunciated in the case of Lyamuya.

Indeed, there is doubt that on 2/6/2021 the applicant's appeal was called on for hearing before the Court of Appeal sitting at Mtwara. As to the attached order of the Court Mr. Mkali represented the applicant and sought leave to withdraw the applicant's appeal and the prayer was granted and he withdrew the same. Surprisingly, Mr. Mkali had laboured a lot expounding on what transpired before the trial tribunal and the first appellate court. I find that unimportant and unnecessary at this stage. The learned Counsel withdrew the applicant's appeal because the appeal was incompetent before the Apex Court for lack of a necessary document called a certificate of delay.

It was my expectation that the learned Advocate for the applicant would have submitted on the reasons for the delay from 2/6/2021 to 17/6/2021. The delay from the time the appeal was lodge in the Court of Appeal to when it was withdrawn by the Court at the instance of the applicant need not be accounted by the applicant as it is obvious that the same was a technical delay.

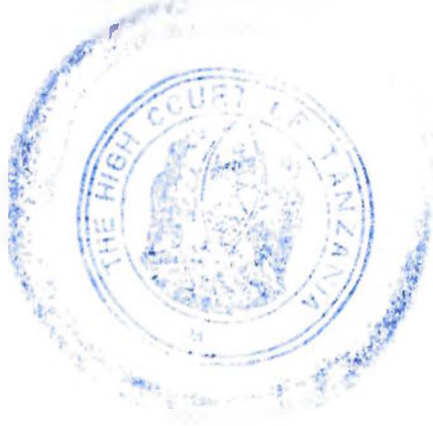
In my opinion, the applicant's affidavit and submission by his learned Counsel ought to have concentrated on the delay from 2/6/2021 to 17/6/2021 when this application was lodged. To that end, I find no sufficient or good reason(s) advanced by the applicant either neither in his affidavit nor his counsel's submission. The delay from 2/6/2021 to 17/6/2021 is about fourteen (14) days. The entire fortnight delay has not been accounted by the applicant.

It should be noted that it has oftentimes been stressed both by this court and the Court of Appeal that each single day of delay be accounted for by the applicant. See a litany of authorities such as: **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No.3 2007 (unreported), **Crispin Juma Mkude vs. R**, Criminal Application No.34 of 2012(unreported), **Bariki Israel vs. R**, Criminal Application No.4 of 2011(unreported) and **Tanzania Coffee Board vs. Rombo Millers Ltd**, (Civil Application 13 of 2015) TZCA 49.

In view of that argument, I expected the applicant to have explained a chain of events or at least, what transpired from the time his appeal was withdrawn to the time he filed this application. Since the applicant has failed to account for each day as required by law, this court is unable to grant the prayer sought namely to extend time to file his notice of appeal and leave to appeal to the Court of Appeal.

In the upshot, I find this application unmerited for lack of good or sufficient cause(s) for granting extension of time to the applicant for lodging a notice of appeal and leave to appeal to the Court of Appeal of Tanzania. In the light of that observation, this application is dismissed with costs to the respondent.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read 'E.I. Laltaika', written over the printed name and title.

JUDGE

21.4.2022

This ruling is delivered under my hand and the seal of this Court on this 21st day of April, 2022 in the presence of Mr. Kassian Ally Mkali, the learned Counsel for the applicant, the applicant and the respondent who have appeared in person and unrepresented.



E.I. LALTAIKA

E.I. Laltaika
JUDGE

21.4.2022