

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT TANZANIA
AT MBEYA
MISC. LAND APPLICATION NO. 80 OF 2021
(Originating from the HIGH Court of Tanzania
at Mbeya Land Case No. 07 of 2013)**

**ELLY M. MWAMBUNGU.....1ST APPLICANT
HANA A. KASANGA.....2ND APPLICANT
VERSUS**

**TANZANIA BUILDING AGENCY.....1ST RESPONDENT
RUNGWE DISTRICT COUNCIL.....2ND RESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT**

R U L I N G

Dated: 8th & 28th February, 2022

KARAYEMAHA, J

This application for extension of time is taken out under section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E. 2019 for filing a notice of appeal against the decision in Land Case No. 7 of 2013.

Essentially, the applicants attempted to appeal to the Court of Appeal via Civil Appeal No. 214 of 2020. Their appeal was struck out for being incompetent on 23/09/2021. They have now approached this temple of justice with an application for extension of time supported by the affidavit sworn by Justinian Mushokorwa fully instructed by the

applicants. In my view, paragraphs 4 and 5 are crucial to the present matter. In paragraph 4 applicants averred that they delayed to appeal on the ground that when the appeal was struck out, the notice of appeal which was filed in time on 20/08/2019 ceased to have effect. They averred further that a copy of the ruling of the Court was supplied to them on 27/09/2021. They could not afterward file the appeal because 3 days after the delivery of the ruling were not working days. 3 days afterwards were spent to wait for the elderly applicants who had to travel from Tukuyu to Mbeya a distance of about 80km to confer with their advocate about the outcome of their appeal.

In the 5th paragraph the applicants proposed what they considered to be novel and serious legal issue for determination by the Court of Appeal. The issue is to the effect as whether the Government could legally repudiate the sale agreements of the suit houses it had voluntarily sold to the two retired civil servants and who had been openly in occupation of those houses for not less than ten years on the reason that the sales were evaluated by mistake.

The respondent filed a counter affidavit sworn by Mr. Joseph Tibaijuka a State Attorney in the Office of Solicitor General – Mbeya Region mandated to represent the respondents. In his counter affidavit,

Mr. Tibaijuka deposed that the applicants failed to account for all the days they delayed after their appeal was struck out. He therefore was convinced that applicants failed to establish good cause to move the court grant their prayers.

At the hearing of the application, Mr. Justinian Mushokorwa represented the applicants, and Mr. Rodgers represented the respondents.

Mr. Mushokorwa reiterated the contents of the affidavit and added that since the applicant's appeal was struck out, they still had a room to appeal against the impugned judgment. Illustrating the reasons why they delayed to appeal, Mr. Mushokorwa submitted that the Court of Appeal copy of ruling of the court was supplied to them on 27/09/2021 four days after its delivery. He said that after getting the copy of ruling, two days out of 4 were weekends (Saturday and Sunday, the applicants spent three days to travel from Tukuyu to Mbeya and consulting him and ultimately commence preparation for the application. Aware of the contention in the counter affidavit and array of Court of Appeal decisions that the applicant must account for a delay of each day, Mr. Mushokorwa submitted that applicants accounted for each day owing to the circumstances of this case. The learned counsel was of the view that

sometimes one case may take long and the other few days but the point to hinge on is what the applicant did during that period. He was convinced that applicants were vigilant and complied with law and cited the case of ***Venance Nyalinga Kazuri v Heldad Mwesigwa Sospiter***, Civil Application No. 599/6 of 2018 to buttress his conviction.

The learned counsel submitted further that once an application reveals a legal issue apparent on the face of the record, application for extension of time must be granted. He relied on the case of ***Ministry for Defence and National Service v Devran Vallambia***, [1992] TLR 185.

Mr. Rodgers, learned counsel for the respondents, scanned merit from Mr. Mushokorwa's submission and relinquished the disputing paragraphs in the counter affidavit. He submitted that this court has discretion to grant applications of this nature. He advanced further that this application falls in the category of technical delay caused by a decision of striking out the appeal No. 214 of 2020 on 24/09/2021. He argued that since applicants collected the ruling on 27/09/2021 and filed the application on 06/10/2021, a lapse of 9 days was not inordinate. Besides, he said, applicants accounted for all 9 days (shifting from the assertions in the counter affidavit). He supported his argument with the

decisions of the Court of Appeal in ***Lyamuya Construction Co. Ltd v Board of Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 (unreported) and ***Attorney General v Oysterbay Villas Limited and another***, Civil Application No. 299/6 of 2016.

Before dealing with the substance of this application in light of the rival submissions, I find it pertinent to restate that it is a settled principle that an application for extension of time for doing of any act authorized by law, under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019, is an exercise of judicial discretion. This is not a new venture. Citing **Black's Law Dictionary (6th ed.)** in ***Mwita s/o Mhere and Ibrahim Mhere v R*** (2005) TLR 107 the Court of Appeal observed that:

"Judicial discretion is the exercise of judgment by a judge or court based on what is fair, under the circumstances and guided by the rules and principles of law the Court has to demonstrate however briefly, how that discretion has been exercised to reach, the decision it takes."

Case law has established that before the Court exercises its discretion under section 11 (1) of the Appellate Jurisdiction Act, it must

have sufficient material before it to account for the delay. The applicant must also show diligence in prosecuting the intended action. And true, time could be extended if the court feels that there is a point of law of sufficient importance. (see ***The Ministry for Defence and National Service (supra), Shanti v Hindochie and others*** (1973) EA 207, ***VIP Engeneering and Marketing Ltd and others v Citibank (T) Ltd***, (Consolidated Civil References Nos. 6,7 and 8 of 2006 (unreported), ***MZA RTC Trading Company Limited v Export Trading Company Limited***, Civil Application No. 12 of 2015 ***Benedict Mumello v Bank of Tanzania***, Civil Appeal No. 12 of 2002 CAT, ***Juluma General Supplies Limited v Stanbic Bank Limited***, Civil Application No. 48 of 2014 and ***Omari R. Ibrahim v Ndege Commercial Services Ltd***, Civil Application No. 83/01 of 2020 (all unreported).

In the present case, with regard to the delay, I would take note from pleadings and submissions that applicants once appealed to the Court of Appeal at Mbeya via Civil Appeal No. 214 of 2020. Conspicuously, the same was struck out for being incompetent on 23/09/2021. Applicants were availed with a copy of the ruling on 27/09/2021. They ultimately filed this application on 06/10/2021. Simple arithmetic reveals that 9 days passed before applicants had filed their

application. Therefore, applicants were legitimately expected to account for the delay of those 9 days. There is such material before me both in the affidavit and submissions.

Both learned counsel, submitted that out of 9 days, 2 days were weekend so the High Court registry was closed. 3 days were used in safari from Tukuyu to Mbeya to confer with their advocate about the outcome of the appeal. In my view 4 days were used for preparations of the application. I therefore, agree with the learned counsel that the delay was not inordinate. In addition applicants have shown diligence in prosecuting their case and I do not smell any degree of prejudice that the respondents may suffer if the application is granted. In this position, I am strengthened by the decisions in ***Lyamuya Construction Co. Ltd*** (supra), ***Attorney General v Oysterbay Villas Limited and another*** (supra) and ***Henry Leonard Maeda and Another v. Ms. John Arael Mongi***, Civil Application No. 31 of 2013 (unreported) that the effluxion of limitation period for appealing occurred while the applicants were busy struggling to pursue their right. After their appeal was struck out they acted promptly sought for legal assistance and then moved this Court for extension of time through this application.

As already indicated, a further ground to the instant application is the applicant's intention to challenge the High Court decision on the ground that it failed to find that the sale agreement was not binding to respondents and whether the Government could legally repudiate the same while it had voluntarily sold the houses to the applicants. Mr. Mushokorwa argued so strongly that this point is substantial and that it was wrong for the High Court to dismiss the applicants' suit while the two houses were legally sold to them.

In my view the combination of the fact that applicants have shown good cause for delay and have established that the intended appeal will be a forum for challenging the legality of the High Court decision, persuade me to grant the application. Accordingly, I order the a notice of appeal be lodged within thirty (15) days from today. Costs of the matter shall follow the event in the cause.



It is so ruled.

DATED at **MBEYA** this 28th day of February, 2022

A handwritten signature in blue ink, appearing to read "J. M. Karayemaha", is written over a horizontal line.

J. M. KARAYEMAHA
JUDGE