

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(IRINGA DISTRICT REGISTRY)**

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO.19 OF 2021

(Arising from Land Application No. 63 of 2019 before the
Iringa District Land and Housing Tribunal)

NASSORO LWILA 1ST APPLICANT

ANYESI N. LWILA 2ND APPLICANT

VERSUS

ANDREW C. NDAKIDEMI 1ST RESPONDENT

MAJEMBE AUCTION MART 2ND RESPONDENT

8/2 & 25/2/2022

RULING

MATOGOLO, J.

This is an application by the Applicants for an order that the court be pleased to enlarge time to allow the Applicants, so as to appeal against the decision of the District Land and Housing Tribunal for Iringa, in Land Application No.63 of 2019, which was determined in favour of the Respondent son 4th December, 2020. They also pray for costs and any other order as the court deems fit and just to grant.

The application is by way of chamber summons made under Section 41 (2) of the Land Disputes Courts Act (Cap 216 R.E 2019) and section 14 (1) of the Law of Limitation Act (Cap 89 R.E 2019). The same is supported by an affidavit sworn by Dr. Ashery Fred Utamwa the Applicant's Advocate.

At the hearing of this application parties were represented, the Applicants were represented by Nuru Stanley learned Advocate from Dr. Utamwa and Associates Advocates while the Respondents enjoyed the services of Mr. Raymond Phillip Byombalirwa learned Advocate from Kalikenya World Law Consult Advocates. The matter was disposed of by way of written submissions.

Nuru Stanley prayed for their affidavit to be adopted and form part of her arguments.

She submitted that, section 41(2) of the Land Disputes Courts Act [Cap 216 R.E 2019] provides that:-

"The High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days".

She submitted that, from the above enabling provision, it is correct to say that, this Court has discretionary powers to extend time for the Applicants to file their intended appeal as long as they produced a sufficient cause. She contended further that, there are no hard or fast rules on what constitutes sufficient or good cause, to cement her argument she

cited the case of ***Samwel Mussa Ng'ohomango versus A.I.C (T) Ufundi***, Civil Application No.26 of 2015, TCA at Mwanza, (unreported), where the Court of Appeal observed that, what amounts to a good cause include among others, whether the application has been brought promptly, the absence of any invalid explanation for delay and the diligence of the applicant.

She went on submitting that, in the instant application, the impugned decision was pronounced on 4th December, 2020, the Applicants were required to file their appeal not later than 18th January, 2021.

The learned advocate submitted further that, the first reason for the Applicants delay is the technical malfunctioning of the Judiciary Statistical Dashboard System (JSDS) electronic filing system that arose when their advocate was uploading the electronic copy of their memorandum of appeal. She said, the Applicants had filed the said appeal timely on 18th January 2021 at around 02:08 PM through the Judiciary Statistical Dashboard System, but the same was not immediately admitted.

She submitted further that, on the next day, the Applicants' Counsel went to see the Deputy Registrar, regarding the delay in admitting the said appeal. He was informed by the Deputy Registrar that the said appeal does not appear among the matters in the system pending for admission. The Deputy Registrar referred the counsel for the applicants to the IT zonal officer one Lusako Mwang'onda for assistance. Then the IT Zonal officer informed him that, at the time he was uploading the file, the system network was down hence it failed to save his appeal for admission and he

was advised to refile the same in the Judicial Statistical Dashboard System (JSDS). She submitted further that, the facts narrated above can be verified by the affidavit of the said Zonal IT Officer attached as annexature NL- 3 in the Applicant's affidavit. She was of a considered opinion that, the problem that hindered the Applicants to file their appeal on 18th January, 2021 was beyond their control, and this may be a sufficient reason for this court to grant the orders sought herein, to support her argument she referred this court to the case of ***Nuru Emmanuel Mpimbi versus Republic***, Misc. Criminal Application No. 39/ 2021 TZHC at Dodoma (unreported) , whereby the High Court extended appeal time for the applicant who was also hindered to file her appeal timely due to the technical malfunctioning of the JSDS, where at page 2 and 3 of its ruling, the court had this to say:-

“ It is clear from the records that the applicant has advanced sufficient reason for her delay as such delay was beyond her control. There is no doubts that the delay was caused by the technical problem at the court, the problem that could not be solved and the applicant albeit her several efforts to file her application online. This in my view was the sufficient reason.....”

She submitted further that, after being advised by the IT expert to refile the appeal online, the Applicants' counsel acted diligently and

immediately re-uploaded the appeal on the same day which was 19/01/2021 and the appeal was admitted as Land Appeal No. 3 of 2021.

The second reason of delay advanced by Nuru Stanley is that, the Applicants after filing land Appeal No 03 of 2021 on 19/01/2021, continued to pursue the same diligently until 10/08/2021, when the appeal was dismissed by this court for being time barred.

She submitted further that, the period from 19/01/2021 to 10/08/2021, when the applicants were pursuing Land Appeal No. 3 of 2021 mistakenly, is forgivable under the concept of technical delay.

She said, it is already settled that, whenever one delays to take any legal action while diligently pursuing another linked action, the delay is a technical one and it shall be a sufficient excuse to be afforded extension of time, to cement her argument she referred this court to the case of ***Fortunatus Masha versus William Shija and Another*** [1997] TLR 154.

She went on submitting that, by virtue of the case of ***Fortunatus Masha***, the time which the Applicants were pursuing Land Appeal No. 03 of 2021, is definitely accounted for. And that after their appeal was dismissed, the Applicants did not relax, but immediately filed this application on 18/08/202, seeking for extension of time before this court.

Regarding the third reason, it is the opinion of the counsel for the Applicants that, this court should consider the diligence that was shown by the Applicants and or their advocate in different occasions as a strong

factor constituting to a sufficient cause. The diligence of the Applicants and or their advocate can easily be spotted in mainly two instances which are;

1. The first instance is when the Applicants' counsel acted diligently, without sloppiness, and managed to accomplish the admission of Land Appeal No. 3 of 2021 in just one (1) day after experiencing technical problems with the JSDS.
2. The second instance is when the Applicants acted promptly and filed this application for extension of time within 8 days after Land Appeal No. 3 of 2021 was found incompetent.

Nuru Stanley was of the considered opinion that, acting diligently is among the factors which amount to a sufficient reason of granting extension of time, to bolster her argument she referred this court to the case of ***Diamond Trust Bank Tanzania Ltd versus Idrisa Shehe Mohamed***, Civil Application No. 89/2018, TCA at Zanzibar, (unreported) whereby Mugasha, JA at page 9 of her ruling had this to say:-

"A point of being diligent is another factor which can lead the Court to exercise its discretion to grant extension of time".

She submitted further that, Mugasha, JA in the case cited above referred the case of ***Royal Insurance Tanzania Limited versus***

Kiwengwe Strand Hotel Limited, Civil Application No. 111 of 2009 (unreported) which stated that:-

"We are satisfied that the applicant has diligently and persistently been in court and out of the Courts corridors in search for justice particularly after discovering the defect himself and attempting to cure it before anybody else".

She submitted further that, after their application being dismissed they did not waste time, they acted promptly and filed this application within 8 days, she argued that, this kind of diligence was appraised by the Court of Appeal in the case of ***Samwel Mussa Ng'ohomango versus A.I.C (T) Ufundi***, Civil Application No. 26 of 2021 TCA at Mwanza (unreported), she submitted that, in the cited case above, the applicant was granted extension of time to file an appeal because he acted promptly by filing his application of extension for time in less than 20 days after obtaining the certificate on point of law.

The learned counsel submitted further that, since it is evident that the Applicants were supplied with the certified copy of impugned judgment on 17th December 2020, from the tribunal stamp endorsed at the last page of the decision, the period from 4th December 2020 should be excluded from computing the time to appeal, by virtue of section 19 (2) of the Law of Limitation Act [Cap 89 R.E 2019].

Nuru Stanley concluded by submitting that, in the light of the reasons given above, the applicants have managed to account for their delay and have clearly established sufficient reasons to be granted extension of time by this court and prayed for this application to be granted with costs and the Applicants be allowed to appeal out of time against Land Application No. 63 of 2019.

In reply Mr. Byombalirwa prayed for the contents of counter affidavit sworn by the 2nd respondent be adopted and form part of his submission. He said this application emanates from application No. 63 of 2019, the application which was concluded on 4th December 2020 before the District Land and Housing Tribunal of Iringa and the certified copies of the said decision was ready for collection by 17th December 2020 of which the Respondent after being dissatisfied with such decision immediately on 23rd December 2020 appealed before the High Court vide Land Appeal No. 41 of 2020, but the Applicants appealed against such impugned decision on 19th January 2021 after the lapse of statutory requirements of 45 days after the date of decision or order.

Mr. Byombalirwa submitted further that, despite of being aware that the time to appeal is within 45 days after the date of decision or order of the trial tribunal but still he acted negligently by lodging Land Appeal No. 3 of 2021 knowingly that the same was time barred, contrary to section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E 2019] which states that:-

“Any appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days”

Mr. Bombalirwa went on arguing that, the law was enacted for a purpose to make sure that dispensation of justice is done smoothly. But it is surprising to note that an advocate with all legal knowledge and trained on how and where to look for the law acted negligently and maliciously by lodging the appeal while knowing that the same was out of time of which does not deserve mercy of this court at this juncture of extension of time. He argued further that, the position would be different if the same could have been done by a lay person, to support his argument he referred this court to the case of ***Martha Daniel versus Peter Nko (1992) T.L.R 359***, Mroso,J. as he then was had this to say:-

“A lawyer is trained on how and where to look for the law. It is easy for a court to reject his plea that he did not realize that a certain legal procedure for filing an appeal exists. But a lay person who has been acting with due diligence may be easily misled by a wrong practice”.

He went on submitting that, the Applicants in their submission in chief admit to have been supplied with the certified copies of the impugned judgment on 17th December, 2020. Mathematically from 4th December, 2020, when the decision was pronounced up to 17th December 2020 when the certified copies of judgment was obtained from the Tribunal is almost 13 days of which can be excluded. However he said, from 17th December, 2020 to 17th January 2021 still there was a grace period of 32 days before the lapse of statutory time to appeal of 45 days after the date of decision or order sought to be appealed against. He said, the Applicants have delayed for 224 clear days from the date when the copies of judgment were issued on 17th December 2020.

He submitted that, the Applicants acted negligently by not complying with mandatory requirements of section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E 2019].

With regard to the case of ***Samuel Mussa Ng'ohomango*** (supra) as cited by the counsel for the Applicants he said is distinguishable to our case at hand. The case is of peculiar nature and does not exist in our jurisdiction as per the decision of Court of Appeal of Tanzania.

He went on submitting, that case also is distinguishable to our instant case because the case at hand originated from the District Land and Housing Tribunal in exercising original jurisdiction and not originated from the Ward Tribunal as it was in the case cited by the counsel for the Applicants, since in the case cited by the counsel for the Applicants the matter originated from the Ward Tribunal and there was a need of

obtaining the certification of point of law from the High Court before lodging the appeal to the Court of Appeal that means there was a process in between of obtaining such certification of point of law and that's what triggered the Court of Appeal to grant extension of time to the applicant because without the certificate he could not file memorandum as it was clearly stated at paragraph 2 of the cited case.

With regard to the reason that the delay is technical malfunctioning of the Judiciary Statistical Dashboard System (JSDS) electronic filing system, Mr. Byombalirwa submitted that, the same does not hold water and he prayed for this court consider it as the kick of dying horse. He argued further that, JSDS is a centralized networking however it is illogical, and impunity to believe that since on 17th December 2020 when the Applicants admitted to have received a certified copy of decision of the District Land and Housing Tribunal of Iringa until on 18th January 2021 JSDS was out of function. He said the applicants admit at page 2 paragraph 2 of annexure KLWC 1 attached in Counter Affidavit, that the delay is a technical malfunctioning of the Judiciary Statistical Dashboard System (JSDS) electronic filing system which occurred on 18th January 2021 and on the next day meaning on 19th January 2021 went to the Registry where he was referred by the Deputy Registrar to the Zonal IT officer one Mr. Lusako Mwang'onda for assistance. He contended further that, the IT officer informed the counsel for the applicants that, when filing the case online there was no network that's why the case was not dully received in the court's registry as per annexure NL-3 paragraph 4 of the

applicants' affidavit, Mr. Byombalirwa quoted the paragraph 4 of the IT officer affidavit as follows:-

"4. KWAMBA, baada ya uchunguzi niligundua kuwa pindi Wakili msomi anapakia kesi yake, mtandao ulikuwa haupatikani hivyo kesi hiyo haikufika kwenye sistimu seva"

He was of the considered opinion that, if there was no networks at all which could have helped the filled document to reach into system server, the same is good as if the documents had never been filed in court through JSDS until when it admitted by the Deputy Registrar. "**CONTRADICTION,**

Regarding the case of ***Nuru Emmanuel Mpimbi***, (supra) as cited by the counsel for the Applicants, he said, the same is distinguishable to the case at hand, because it cannot be said that technical problem which occurred on JSDS were left unsolved since 17th December 2020 when the counsel obtained certified copies of impugned decision of the Tribunal up to 18th January 2021 when lodged Land Appeal No. 3 of 2021 of which was time barred.

With regard to the second argument advanced by the counsel for the applicants in her submission, He viewed the same to have no merit due to the reason that on 19th January 2021 when the counsel for the Applicants was lodging the land Appeal No. 3 of 2021 was quite aware that the same was time barred as pleaded in his affidavit in paragraphs 3, 4, 7 and 8 but negligently and maliciously proceeded forthwith until when the same

appeal was dismissed by Hon. Y.J Mlyambina on 10/08/2021 for being time barred for almost 8 months.

He went on submitting that, since 19th January 2021 when the out of time appeal was lodged until 10th August 2021 when the same was dismissed the Applicants' counsel was pursuing an appeal mistakenly, such kind of behaviors cannot be acceptable to be applied as a caves or the shield so as to enable the counsel for the Applicants to hide his unfulfilled professional duty of not complying with 45 days' time limit to appeal. He contended further that, this cannot be forgivable under the umbrella of technical delay since once a court will allow that, then it will be creating bad precedent especially to Advocates who are trained on how and where to look for the law, he referred the case of ***Martha Daniel*** (supra).

He submitted further that, the case of ***Fortunatus Masha versus William Shija*** (supra) cited by the counsel for the applicants is distinguishable since in that case, the original appeal was lodged in time but was found to be incompetent hence was struck out, that is why the extension of time was granted. But in the present application the appeal was filed after expiration of 45 days, even after the determination of the said appeal lodged by the counsel for the Applicants then the same was dismissed and thirdly the counsel for the Applicants herein did not act immediately after the date of dismissal of the appeal dated on 10th August 2021 instead lodging her application for extension of time on 18th August 2021 which is almost 9 days have passed since the dismissal order bearing in mind that, the copies of ruling was issued on the same date. He argued

further that, the Applicants acted negligently without diligence something which is unacceptable and unforgivable and does not deserve the mercy of this court.

With regard to the third argument raised by the Applicants' counsel in her submission, he viewed it to have no legal point because there is no any kind of diligence which was shown by neither the Applicants nor their advocate.

Regarding the case of ***Diamond Trust Tanzania Ltd versus Idrisa Shehe Mohamed*** (supra), he submitted that the same is distinguishable to the case at hand, because in the cited case at page 10 of the typed judgment, the applicant was granted with extension of time since at paragraph 13 of the affidavit, raised the point of illegality found in the decision sought to be appealed against that is why the Court of Appeal granted the applicant with extension of time. But in the case at hand the counsel for the Applicants in his affidavit there is no any paragraph showing that there is a point of illegality warranting extension of time so as to be determined by this court rather than stating grounds which shows gross negligent committed by Applicants by failure to lodge an appeal in time.

He went on submitting that, it is the requirements law that once a party to the case applies for the extension of time before the court, he should account for each day of delay, to support his argument he cited the case of ***Unilever Tea Tanzania Limited & Another versus Miraji Mpira***, Misc. Civil Application No. 21 of 2017 HC of Tanzania at Iringa

District Registry (unreported) at page 15, the High court referred to the decision of Court of Appeal of Tanzania by Massati, JA (as he then was), which set five guidelines the court must observe in granting extension of time as per the decision in the case of ***Lyamuya Construction Company Limited versus Board of Trustees of Young Christian Association of Tanzania***, Civil Application No. 02 of 2010 (unreported) , that is:-

- “(a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate.*
- (c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged.*

He also referred the case of ***Tanzania Coffee Board versus Rombo Millers Limited***, Civil Application No. 13 of 2015 (unreported), which insisted on the requirement of accounting for every day of delay but, the applicants have not accounted for 224 clear days for all period of delay and their delay is inordinate and they have not shown diligence in pursuing the matter. They have been negligent for 8 days till on 18th August 2021 when they filed their application seeking for extension of time to file an appeal out of time.

He went on submitting that, the application for extension of time by the applicants cannot be a proof by the applicants that they were vigilant in prosecuting the case. He cited the case of ***Finca (T) Limited & Another versus Boniface Mwalukisa***, Civil Application No. 589/12 of 2018, Court of Appeal of Tanzania at Arusha (unreported) at page 7 of the typed judgment where Korosso, J.A , in her decision made reference to the case of ***Bushiri Hassan versus Latifa Lukio, Mashayo***, Civil Application No. 03 of 2007 (Unreported) and ***Karibu Textile Mills versus Commissioner General (TRA)***, Civil Application No. 192/ 20 of 2016 (unreported), in the case of ***Bushiri Hassan***, the Court stated that:-

"Delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken".

He submitted that, it should be noted that even the overriding principle cannot be applied in clear violation of the laws as was occasionally insisted in various decisions by the Court of Appeal of Tanzania in the case of ***Mondorosi Village Council and 2 Others versus Tanzania Breweries Limited and 4 Others***, Civil Appeal No. 66 of 2017 in which the Court held in respect of the application of overriding principle that:-

"..... the overriding principle cannot be applied blindly against mandatory provision procedural law"

Regarding the cases cited by the counsel for the applicants, he prayed for the same to be expunged from the records since the said decision authority does not exist in our jurisdiction as far as the Court of appeal of Tanzania (CAT) is concerned. Thus, he prayed for this court to agree with their submission based on position taken, law cited and other authorities and dismiss the application with costs.

In rejoinder, counsel for the Applicants basically reiterated what they submitted in submission in chief and he prayed for this court to disregard the respondent's counsel prayer of expunging all cases cited with the abbreviation TCA, meaning Tanzania Court of Appeal. He contended that, all authorities cited by the applicants were well cited and attached in their submissions for easy of reference. Therefore the 1st respondent can not convince this court that, he failed to find the said authorities.

He proceeded arguing that, the 1st respondent misconceived a lot of facts and misdirected himself in so many ways as far this application is concerned. For instance, the said respondent has misdirected himself to believe that, the applicants filed Land Appeal No. 3 of 2021, while knowing that the same is time barred, while in reality, the applicants filed Land Appeal No. 3 of 2021 while believing to be within time because of two logical reasons. The first reason is due to the fact that, the applicants filed Land Appeal No. 03 of 2021 on 18th January, 2021 but the same ended up to be physically presented for filing the next day on 19th January 2021, due to technical problems with the online system admission system. Therefore, the applicants believed that their appeal was filed within time, until Hon.

Y.J Mlyambina, J, ruled on 10th August, 2021, that the applicants were supposed to first seek leave of this court, by filing a formal application like the one at hand, and use the technical problems that they encountered as their ground for extension of time.

With regard to argument that, the applicants failed to account 224 days of delay, Dr. Utamwa submitted that, the calculation of 224 of delay starting from 17th December 2020 are mistaken and misconceived by the 1st respondent, because the right period that the applicants are required to account for, is from 18th January 2021 as misconstrued by the 1st respondent in his reply submission. He argued the period for all period of delay has been well accounted for in the applicants submission in chief.

Hence the applicants insisted for their application to be granted with costs.

Having read the respective submissions by the parties, and having passed through the chamber summons and the affidavit supporting this application, it is my opinion that, the issue for determination here is whether the applicants has managed to explain the delay to warrant this court to exercise its discretion to grant the extension of time.

In the case of ***Lyamuya Construction Company Limited versus Board of Trustees of Young Christian Association of Tanzania***, Civil Application No. 02 of 2010 (unreported)

- “(a)The applicant must account for all the period of delay.*
(b)The delay should not be inordinate.

(c) The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.

(d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged”.

In the same case the court went on holding that:-

“ As a matter of general principle, it is in the discretion of the court to grant extension of time, but that discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to the private opinion or arbitrarily”.

In the instant application the decision sought to be challenged was delivered on 4th December, 2020 and the documents were ready for collection on 17th December 2020, then the applicants filed an appeal before this Court, Land Appeal No.03 of 2021, on 19th January 2021, the same was dismissed on 10th August 2021 as it was time barred. The instant application was filed on 18th August 2021. That is to say the applicants filed their appeal after 46 days from the date judgment of the DLHT was delivered. But section 41(2) of the Land Disputes Courts Act [Cap. 216 R.E

2019] confers powers to this court to grant extension before or after the expiry of days provided. The same provides that:-

“The High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty – five days”

The applicants stated in their affidavit specifically at paragraph 4, 5 and 6 that the reason for the delay is failure of the system, that is JSDS2.

The counsel for the applicants submitted that, the first reason for the delay, is that on 18/1/2021 she lodged the appeal through electronic filing system but the same was not admitted immediately, after that, he made several follow- ups regarding the delay to the Deputy Registrar High Court Iringa, the Deputy Registrar told her that he did not see the said appeal, then he referred the counsel to the zonal IT Officer for further assistance. The IT officer informed her that, the said file uploaded through his account was not retrievable due to technical malfunctioning of the JSDS and advised him to refile the same. To support her assertion the counsel for the applicants attached an affidavit of the IT Zonal Officer one Lusako Mwang'onda. The following day on 19th January 2021 she filed their appeal, but already it was time barred, the same was dismissed. With regard to the first reason for delay Mr. Byombalirwa argued that, the reason is unacceptable because the statement by the counsel for the

applicants that, when uploading the case in JSDS2 the network was down, this statement contradicts with what is contained in the IT Officer affidavit. Also, he argued further that, the affidavit by the Zonal IT officer is unacceptable under the law as the same was prepared afterthought so as to mislead this court.

Having carefully read the court records, it is my considered opinion that, this reason lack merit, because despite the fact that the counsel for the Applicants attempted to file the appeal electronically, but the system was down, the learned counsel was required to take initiative to satisfy herself that the applicants are still within time before she re-lodged the appeal. Otherwise she should have sought authorization from the Deputy Registrar before she lodge the appeal. It is that is why the same was dismissed after been found filed out of time. There is an argument by the Respondents' counsel that, the affidavit of the IT Officer was prepared as an afterthought. The DLHT decision was delivered on 4th December 2020, and the applicants were supplied with the copies of judgment on 17th December 2020 and their appeal was filed on 19th January 2021, that is 33 days after obtaining copies of judgment. The period elapsed from the date of judgment to the date the judgment and decree were certified ready for collection is 13 days. These days are to be excluded in computing days of delay per section 19 (2) of the Law of Limitation Act, (Cap. 89 R.E 2019), which provides:-

"In computing the period of limitation prescribed for an appeal, an application

for leave to appeal, or an application for review of judgment, the delay on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded”.

Same position was taken in the case of ***Valerie McGivern versus Salim Farkrudin Balal***, Civil Appeal No. 386 of 2019 CAT. It means that if you minus 13 days from 45 days provided by law for appealing, the Applicants were left with 32 days at their disposal which expired on 18/1/2021. To lodge an appeal on 19/1/2021 without seeking leave of the court while knowing that the period for appeal has expired is lack of diligence on part of the advocate. It is trite law that delay of even a single day has to be accounted for. (See ***Finca (T) Limited Another vs. Boniface Mwalukasa***), (supra).

The second reason for delay advanced by the applicants is a technical delay, the learned counsel contended that, the applicants after filing Land Appeal No. 3 of 2021 on 19/ 01/ 2021 continued to pursue the same diligently until when it was dismissed by this court on 10/08/2021 for being time barred. She was of the view that, whenever one delays to take any legal action while diligently pursuing linked action, the delay is technical one and it shall be sufficient excuse to be afforded extension of time, to support her argument she cited the case of ***Fortunatus Masha***

versus William Shija, (supra). The learned counsel for the Respondents has countered this and I agree with him. In **Fortunatus Masha Case**, the original appeal was filed in time but only that it was found incompetent. The above cited case is therefore distinguishable. The court in that case clearly stated as follows:-

*" A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involve technical delays **in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted.** In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted". (Emphasis supplied).*

In their submission the Applicants argued that, their delay is a technical delay, because from 19th January 2021 to 10th August 2021 the Applicants were not relaxed they were pursuing their matter linked with this application believing that they were within time. However, I pointed

out above that before lodging the appeal, the Applicants have never been diligent as they were aware that they were already out of time.

With regard to the issue of accounting for every day of delay, Mr. Byombalirwa submitted that, the Applicants have failed to account for 224 days of delay from the date the Applicants were supplied with copies of judgment and decree. Dr. Utamwa submitted that, the calculation that, the Applicants were supposed to account 224 of delay starting from 17th December, 2020 when they were supplied with the copies of the impugned judgment, is mistaken and misconceived by the 1st respondent counsel because the right period that the Applicants are required to account for is from 18th January 2021 to 10th August 2021. The only and simple question to ask ourselves is by lodging their appeal on 19/1/2021 whether the applicants were in time. The quick answer is no, that is why the appeal was dismissed. Even the period from 18th January 2020 to 10th August 2021 the Applicants were pursuing their appeal until when the same was dismissed for being time barred they were doing so negligently. It is settled law that a mistake made by a party's advocate through negligence or lack of diligence cannot constitute a ground for condonation of delay but a minor lapse committed in good faith can be ignored. In the case of ***Yusufu Same and Another v. Hadija Yusufu***, Civil Appeal No. 1 of 2002, CAT (unreported), it was stated that:-

"Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient

*cause for extension of time. This has been held in numerous decisions of the Court and other similar jurisdictions....But there are times, depending on the circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate as was held by a single judge of the Court (Mfalila, JA, as he then was) in **Felix Tumbo Kisima v. TTC Limited and Another- CAT Civil Application No.1 of 1997 (unreported)**".*

But the circumstances of this case are not similar to the circumstances of the cited case for the Applicants to benefit with the exception explained in **Tumbo Kisima vs, TTCL and Another,** (supra). Having considered reasons advanced by the Applicants, reply submissions by the 1st Respondent and having carefully perused the court records it is my considered view that, the Applicants have not advanced sufficient reasons for their delay to warrant the court to grant them extension of time. I have reached this decision because the Applicants were not diligent in pursuing their matter, after being supplied with a copy of judgment on 17th December 2020 it took them 32 days to file their appeal on 18th January 2021, well that was within time but the same was not admitted as

the JSDS2 network was down. The following day on 19th January, 2021, they managed to file their appeal, but already they were out of time, they were not spared by this court, their appeal was dismissed for being time bared for one day. From there it took them 8 days to file the present application. Had the applicants were diligent enough, they could not waited up to the last day of their right to appeal as anything could happen as it happened to them. Also there is no good explanation given as to why it took them eight days to file this application instead of acting promptly. All these show that the Applicants were not diligent enough in pursuing their matter as they acted dilatorily that is why they find themselves captured in the web of time limit. I have given due consideration to the cases cited by the learned counsel for the applicants, with due respect they do not assist them. The applicants have failed to advance sufficient cause for the delay and sufficient cause for this court to grant the sought extension of time. Hence this application lacks merit the same is dismissed with costs.




F.N. MATOGOLO

JUDGE

25/2/2022.

Date: 25/02/2022.
Coram: Hon. M. A. Malewo – DR
Applicants: Present
Respondent: Present
C/C: Charles

COURT:

Delivered in the presence of Mr. Mwinuka, learned advocate for the applicants and 1st respondent appeared in person. Mr. Charles Mwasumbi (Clerk) also present.



M. A. Malewo
DEPUTY REGISTRAR
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Right of Appeal explained.



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