

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISCELLANEOUS LAND APPLICATION NO. 47 OF 2021**

(Arising from Land Appeal No. 57 of 2016 in the High Court of Dodoma and Land Application No. 88 of 2011 in the District Land and Housing Tribunal for Dodoma)

**MARYGRACE SULEIMAN & 5 OTHERS ..... APPLICANTS**

**VERSUS**

**VICENT MASENEJE..... RESPONDENT**

**RULING**

27/09/2022 & 27/10/2022

**KAGOMBA, J**

The applicants have filed this application under section 11(1) of the Appellate Jurisdiction Act, [Cap 141 R.E 2019] and section 47(1) of the Land Dispute Courts Act, [Cap 216 R.E 2019] praying this Court to grant extension of time within which to file Notice of Appeal and leave to appeal to the Court of Appeal of Tanzania (CAT) against the judgment of this Court in Land Appeal No. 57 of 2016 delivered on 16/6/2017. The application is supported by the affidavit of Marygrace Suleiman and was adopted as part of the applicants' submissions before this Court. The hearing was ordered to proceed *ex parte*.

On the date of hearing, the Court was informed by Mr. Kidumage, learned advocate for the applicant, that the applicants had timely filed their notice of appeal, applied for extension of time and were granted extension

of time to lodge their application for leave to appeal to CAT, which they got on 18/6/2018.

The Court was further told that after obtaining leave to appeal, the applicants lodged their Civil Appeal No. 24 of 2019 to CAT on 22/9/2020 but the same was struck out for being time barred. That, under such circumstance, the applicants had to lodge their application for extension of time to file the notice of appeal and application for leave to appeal to CAT, which was registered as Misc. Land Application No. 70 of 2020. That, the applicants withdrew their application having found that it had errors that could render the same incompetent.

It was the applicant's argument that after the Misc. Land Application was withdrawn, the 1<sup>st</sup> applicant was seriously burnt, an act that caused her to be hospitalized and therefore she could not reinstitute the application immediately. Annexure A6 to the supporting affidavit showed the photos of a lady with her body burnt on thighs and hands.

Mr. Kidumage, therefore, submitted that the appeal which was lodged timely was struck out by CAT on 22/9/2020 for a technical reason. He explained the specific reason being that the letter applying for proceedings was not written within 30days from the date of the decision, and after filing notice of appeal. He said, the applicants wrote the letter after they were granted leave, which act the CAT found to be wrong. He submitted that, after the appeal was struck out, the notice and leave also demised, hence this application.

Mr. Kidumage insisted on the Court to consider two facts as imputed by affidavit; firstly, that the delay was not real but technical one. On this aspect he cited the case of **Fortunatus Masha V. William Shija and Another** [1997] T.L.R 154.

Secondly; the decision they intended to appeal against had issue of illegality, one such issue being interpretation of the Law of Marriage Act on right of spouses. To support his argument on illegality issues, he cited the case of **Kalunga and Co. Advocate Vs. National Bank of Commerce Ltd** (2006) T.L.R 235.

I have considered the submissions of Mr. Kidumage in light of the supporting affidavit to determine whether there is sufficient cause to grant this application.

This being an *ex parte* hearing, I have considered both the averments in the affidavit and the oral submissions made to me by Mr. Kidumage. In para 6 and 7 of the affidavit, the deponent tells the Court that after the applicants' appeal was struck out, they lodged Misc. Land Application No. 70 of 2020 for various relevant orders. She further avers that they withdrew the application upon realizing that it had errors which could render it incompetent.

What surprised me is the averments in paragraph 7 of the affidavit. The 1<sup>st</sup> applicant avers that after withdrawal of Misc. Land Case Application No. 70 of 2020 she was hospitalized after being burnt on large part of her body. She couldn't therefore, reinstitute the present application. This reason

does not satisfy the Court, owing to the fact that there are six (6) applicants in this application. It beats my mind to appreciate why the rest of the applicants could not take over the matter and file their application within time. The deponent has not stated the reason for her, and not the rest of the applicants, to be in charge of this matter.

The second reason why the explanation averred in the supporting affidavit is not satisfactory is the fact that the affidavit does not state when was the deponent admitted in hospital after being burnt and when was she discharged. Since the application is concerned with delay on part of the applicants to take necessary legal action, it was absolutely important to show the dates of events pleaded to convince the Court to find that sufficient cause existed. In this application, apart from the photo attached, there is no medical chit to attached so as to match the same with the photos.

For the above reason, I find that the argument by Mr. Kidumage that the delay was technical and not real, is not true, as there is real and unexplained delay as I have explained above.

The only reason which appears convincing is the existence of points of illegality. However, the said points of illegality are neither mentioned nor explained in the affidavit. It is Mr. Kidumage who has revealed to the Court that there is a need to have proper interpretation of S. 56 of the Law of Marriage Act with regard to the right of the spouses. I must say that, this is not the way to move the Court. The affidavit is the evidence supporting the application. In paragraph 8 where illegality has been pleaded nothing is mentioned at all to be the illegality concerned. As such, what is stated by

Mr. Kidumage, which is not stated in the affidavit is nothing but a speculative statement from the bar.

The law is settled that parties are bound by their own pleadings. In **Astepro Investment Co. Ltd v. Jawinga Co. Ltd**, Civil Appeal No.8 of 2015, (unreported), the Court of Appeal stated that it is;

*"...a cherished principle in pleading that, the proceedings in a civil suit and the decision thereof, has to come from what has been pleaded, and so goes the parlance 'parties are bound to their own pleadings'".*

As parties are bound by their own pleadings, they are also bound by inadequacies in those pleadings. I therefore disregard what was orally submitted by Mr. Kidumage for lacking legal standing.

In the upshot, I find no sufficient reason to grant extension of time. The application is therefore dismissed. No order as to costs.

**Dated at Dodoma** this 27<sup>th</sup> day of October, 2022



A handwritten signature in blue ink, appearing to read "ABDI S. KAGOMBA".

ABDI S. KAGOMBA  
**JUDGE**