

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION. 25 OF 2021

*(Originating from Land Case No 99 of 2019 and Land case Appeal No 5
of 2020)*

HAMISI FAKIHI BAKARI and 3 othersAPPLICANTS

VERSUS

**KASIMU FAKIHI BAKARI (Administrator of the Estate of the late
Fakihi Bakari Akalama.....RESPONDENT**

Date of Hearing: 15/03/2022

Date of Ruling: 28/03/2022

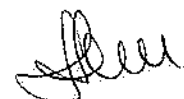
RULING

Muruke, J.

Hamisi Fakihi Bakari and 3 others filed present application for extension of time to file application for leave to the Court of appeal. Same is supported by affidavits of both four applicants.

Respondent filed counter affidavit to refute contents of applicants affidavit. On the date set for hearing, applicants were represented by Happiness Sabato, while Hussein Mtembwa represented respondent. Court adopted affidavits of both applicants and Respondent to be their submission in support of their case.

Applicant Counsel argued court to be guided by the Court of Appeal decision in the case of Vodacom Tanzania Public Co. Ltd vs.



Commissioner General TRA, Civil Application number 465/20 of 2019. (unreported) and grant orders sought.

On the other hand, respondent counsel requested this court to be guided by following decision to refuse applicants application

- i. Civil Application number 10 of 2015 in Ngao Godwin losero vs. Julius Mwarabu, court of Appeal at Arusha (unreported).
- ii. Mansoor Daya Chemicals Ltd Vs. National Bank of Commerce Civil application number 88 of 2016 Court of Appeal at Dar es salaam (unreported).
- iii. Mwajuma T. Bakari Vs. Tanzania Postal Bank Misc Land Case worse No 3/2017 Mtwara Registry. (unreported)

Having gone through both affidavits and authorities cited by both advocate, what applicant is requesting before this court, is extension of time to file leave for them to be heard by the Court of Appeal. The right to be heard is safeguarded in the constitution; Article 13(6) (a) of the constitution provides in the Kiswahili version thus;

“(6) Kwa madhumini ya kuhakikisha usawa mbele ya sheria, mamlaka ya nchi itaweka taratibu zinazofaa au zinazo zingatia misingi kwamba;”

“(a) Wakati wa haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa mahakama au chombo kingine kinacho husika, basi mtu huyo atakuwa na haki ya kukata rufaa au kupata nafuu nyingine ya sheria kutokana na maamuzi ya mahakama au chombo hicho kinginecho kinachohusika.”



Court of Appeal in the case of **Mobrama Gold Corportion Ltd Vs. Minister for Energy and Mineral, and East African Goldmines Ltd as Intervor [1998] TLR 245**, observed that;

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents' delay does not constitute a case of procedural abuse or contemptuous default and because the respondent will not suffer any prejudice, if extension sought is granted."

In totality, applicant has advanced good grounds for extension sought, thus extension of time is granted. Application for leave to be filed within 14 days from today. Respondent to be awarded costs.




Z. G. Muruke

Judge

28/03/2022

Ruling delivered in the presence of Happiness Sabato for the applicants and also holding brief of Rose Ndemereje Counsel for the Respondent.




Z. G. Muruke

Judge

28/03/2022