

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**MISC. CIVIL APPLICATION No. 146 OF 2021**

*(Arising from the Ruling of the High Court of Tanzania at Mwanza in Misc.  
Land Application No 61 of 2021)*

**TATU BUSIA (As administrator of the Estate of  
the Late Busia Fuku.....)APPLICANT**

**VERSUS**

**BUJIKU BUSIA.....1<sup>ST</sup> RESPONDENT**

**YAHAYA JOSEPH MARWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Last Order date: 15.03.2022*

*Ruling Date: 23.03.2022*

**M. MNYUKWA, J.**

By way of chamber summons, the applicant Tatu Busia applied to this court for an order to extend time to file an appeal to the Court of Appeal of Tanzania against the decision of the High Court out of time and that this court to grant leave for the applicant to appeal to the Court of Appeal against the judgement of the High Court, costs of the application and any other relief this court may deem fit and just to grant. The application is preferred to this court under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R.E: 2019, Rule 45(a) of the Court of Appeal



Rules, 2009 and section 95 of the Civil Procedure Code, Cap 33 R.E 2019 supported by the affidavit sworn by Tatu Busia, the applicant.

The brief background of the matter is that, the present application originated from the decision of the District Land and Housing Tribunal for Mwanza at Mwanza in Application No 261 of 2012 and the High Court of Mwanza in Misc. Land Application No 61 of 2021. Upon hearing, this court dismissed the application with costs on 15/9/2021 and that she was supplied with the copy of the Ruling on 29/09/2021. Aggrieved by the decision of the this court, the applicant intended to lodge her appeal to the Court of Appeal. After being supplied with the copy of Ruling, the applicant sought legal aid services from Tanganyika Law Society at Mwanza Chapter as she could not afford to hire an advocate due to financial constraints. That after the internal processes within the Tanganyika Law Society she was informed about her request to be accepted on 09/11/2021 and she filed this application on 25/11/2021 for extension of time to file her appeal out of time and the application to be granted leave to appeal to the Court of Appeal of Tanzania.


The respondents filed the reply to the affidavit sworn in by their advocate Mr. Julius Mushobozi who objected the application for extension of time as well as for leave to appeal to the Court of Appeal of Tanzania.



By the order of the court and with the consent of the parties the application was argued orally. The applicant was represented by Mr. Julius Kinango, learned counsel while the respondents enjoyed the legal services of Mr. Julius Mushobozi, learned advocate.

Submitting for the application, the applicant's counsel prayed to adopt the applicant chamber summons, affidavit and the annextures filed in this court to form part of his submission. He fronted two reasons for this court to consider and allow the applicant application. He submitted that the applicant delayed to bring this application because she was not timely supplied with the copy of the Ruling and that the applicant who sued as a pauper, she was delayed by the Tanganyika Law Society Mwanza Chapter to be admitted in legal aid service programme.

The counsel for the applicant submitted that, immediately after the applicant received a copy of the Ruling, she lodged a Notice of Appeal to the Court of Appeal and serve the respondent, and that was a clear indication that she intended to appeal. That due to the internal logistical arrangement within the Tanganyika Law Society Mwanza Chapter as the applicant was seeking legal aid assistance from them, she delayed to get response until on 8/11/2021 of which Mr. Joseph Kinango was appointed to handle the applicant's case who immediately filed the present



application before this court. He added that the application was also delayed to be admitted in this court by the Registrar due to exemption in legal fees as the JSDS clearly indicated that the application was filed on 10/11/2021 which is exactly two days after being instructed to represent the applicant. For that reasons, he believed that the applicant had managed to advance good cause for delay and to account for each day of delay as required by the law.

On the second limb, the counsel for the applicant prayed this court to grant leave for the applicant to appeal to the Court of Appeal since the applicant's affidavit raised some legal issues of general importance which are prima facie arguable before the Court of Appeal. He stated that, the applicant's affidavit as reflected on paragraph 15. 16 and 17 raised issues such as right to be heard, when the time barred application is dismissed, does the applicant have any avenue to seek extension of time and the issue of evaluation of evidence presented before the court.

He retires his submission by praying this court to grant the applicant's application so as to get the chance to air out her grievances and dissatisfaction so as the right of the parties to be heard on merit.

Responding to the applicant's submissions, Mr. Julius Mushobozi, the learned advocate for the respondents started by praying this court to



adopt the respondents' counter affidavit to form part of his submissions. He went on that; the applicant's affidavit falls short of reasons as to why she did not file her appeal at a prescribed time after it was dismissed. He went on that, it is undisputed that the impugned Ruling was delivered on 15/9/2021 and the present application was preferred on 25/11/2021.

He went on that, the purported reason that the applicant was delayed to be supplied with the copy of Ruling is a mere words since in her affidavit as reflected under paragraph 5, the copy of the Ruling was supplied to her on 29/9/2021 which is within 14 days. He insisted that since the application for leave to appeal to the Court of Appeal was supposed to be filed within 30 days, she was within time and therefore that can not be a good reason for her delay.

The counsel for the respondents further submitted that, the reason advanced by the applicant that she delayed because she was seeking a legal aid assistance from the Tanganyika Law Society can not be regarded as a good cause to warrant this court to grant her application, He contended that, the applicant failed to justify before this court as to why she remained inactive until 8/11/2021 while the impugned Ruling was delivered on 15/09/2021 and supplied to her on 29/09/2021. He added



that from 15/09/2021 to 18/11/2021 is more than a month and she did not discharge her burden to account for each day of delay.

The counsel for respondents contended further that, he was aware that according to paragraph 6 and 7 of the applicant's affidavit she made a request for legal aid, but nothing has been produced before this court to prove her allegation as she was expected to tender the application letter for requesting legal aid. He went on drawing attention of this court that Mr. Kinango was the one who was representing the applicant before the High Court and he was the one who made an application to this court to be supplied with the copy of a Ruling on 11/10/2021 as shown in Annexure GM3 as he styled himself as the counsel for the applicant and he was the one who filed the notice of intention of appeal on 12/10/2021.

Thus, there is no evidence in court as to when the chain of legal service comes to an end between the applicant and his advocate until she sought legal aid service to Tanganyika Law Society. He insisted that, since the applicant's counsel had the instructions on the above two aspects, he could have also filed the application for leave to this court. He relies on this ground by submitting that there was no good cause for this court to grant the application.



On the second limb, the counsel for the respondent submitted that the leave to appeal to the Court of Appeal is not well premised before this court as the applicant is ought to have waited until the application for extension of time is decided. He went on that, nevertheless, there are no triable issue in this application because firstly, the parties were afforded the right to be heard through oral submissions, secondly, the matter is already settled and determined as it is reflected on pages 3, 4 and 5 of the High Court judgement and lastly the applicant ought to state clearly the evidence that was alleged to be poorly evaluated and misdirected. He retires on this ground by averred that, the issues forwarded by the applicant are not triable issues and therefore prayed the same to be dismissed with costs.

Rejoining, the applicant's counsel submitted that as indicated on paragraph 7 of the applicant's affidavit, the applicant requested for legal aid service from Tanganyika Law Society orally on 30/09/2021. He went on to state that normally if the client is dissatisfied with the decision of the High Court, in order to arrest time the advocate who represent the client lodge the notice of appeal and they returned the files to the Tanganyika Law Society accompanied by a report. Then it is upon the





Tanganyika Law Society to re-assign the file to the same advocate or to another advocate and that he was re-assigned the file on 8/11/2021.

He went on that at this stage he is not supposed to indicate which evidence was improperly evaluated as it will be like arguing the appeal. He maintains that the issues raised in the applicant's affidavit are triable issues before the Court of Appeal.

I have given careful consideration to the arguments for the application herein advanced by the applicant as well as the respondent learned counsel. I find the central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant and whether there are triable issues for this court to grant leave to the applicant to appeal to the Court of Appeal.

Before I determined the present application on merit as it is presented by the applicant, I find the respondents' counsel argument on his submission that the applicant ought not to bring the two application in the same chamber summons as she was supposed to wait until the application for extension of time to be determined is when she could have filed the application for leave to appeal to the Court of Appeal. This argument does not feature in his reply to the affidavit nor a preliminary





objection was filed to this court. In other words, the counsel for the respondents suggest that the two applications can not be brought and determined together as the application for leave should wait until the applicant's application for extension of time is decided.

In my opinion the combination of two distinct application is not bad in law if the affidavit sufficiently addressed each application and more importantly if the application are related since there is no law which forbids the High Court to entertain the two applications. Since we are in the era of ensuring timely justice for all, and this can be achieved by encouraging the multiplicity of the application so as long as the affidavit sufficiently addressed both applications which are related, I proceed to determine the application as presented. (See the persuasive decisions of this court in the case of **Pride Tanzania Limited vs Mwanzani Kasatu Kasamia**, Miscellaneous Commercial Case No. 131 of 2015, HC Commercial Division at Dar es Salaam and the case of **Mwanya Selemani vs Hamisi Juma**, Civil Appeal No 277 of 2017, HC Registry, Dar es Salaam.) (both unreported)

Turning to the merit of the application, starting with the application for extension of time, it is an established principle that the decision to grant or not grant an order of extension of time is within court discretion. It all



depend upon party seeking an order to adduce sufficient reasons that prevents him from doing what he was supposed to do within the time.

The position of the law is clear and settled when it comes to granting an order for extension of time. There is a surfeit of legal authorities in this respect. In the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held;

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

Again it is also settled law that in application for extension of time the applicant must have shown good cause to warrant the court to extend time by accounting for each and every day of delay as it is the position of the law in our jurisdiction, See the case of **Tanzania Fish Processors Limited vs Eusto K Ntagalinda**, Civil Application No 41/08 of 2018, CAT at Mwanza, **Dar es Salam City Council vs Group Security Co. Ltd**, Civil Application No 234 of 2015, CAT at DSM and **Juma Shomari vs Kabwere Mambo**, Civil Application No 330/17 of 2020 (Both unreported)

I have revisited the applicant's affidavit, respondents reply to the affidavit and going through their oral submissions to find out what



transpires to this application. Going to the records, I find the applicant intended to file appeal to the Court of Appeal as she was dissatisfied with the decision of this court. For the circumstances prevailing in the present application, she can not file leave to appeal to the Court of Appeal before seeking an extension of time as she is out of the prescribed time to lodge leave to appeal to the Court of Appeal. The guiding law requires any person aggrieved by the decision of this court to file an appeal within 30 days (See Rule 45(a) of the Court of Appeal Rules, 2019.)

The applicant has brought an explanation that she was dissatisfied with the decision of the High Court in Misc. Land Application No 61 of 2021 and that she had the intention to appeal by lodging the notice to appeal within time and served the respondent who acknowledged receipt by endorsing his signature on 18<sup>th</sup> October 2021. That she delayed to get a copy of the Ruling as she received the same on 29<sup>th</sup> September 2021 and on 30<sup>th</sup> September 2021 she lodged the request to be provided with legal aid from Tanganyika Law Society as she could not be able to hire advocate due to financial constraints. The applicant further deposed in her affidavit that she was interviewed on 15<sup>th</sup> October 2021 and after being assessed she was informed that she was qualified to be granted legal aid assistance



vide a letter dated 8<sup>th</sup> November 2021 that was received on 9<sup>th</sup> November 2021.

The above explanation was supported by her counsel who submitted that soon after being notified to represent the applicant he file the present application within two days as it can be reflected in the JSDS though the same was not admitted on time as the applicant was seeking legal fees exemption in court. The counsel for the applicant further stated that he was representing the applicant at the High Court and that after the finalization of the case he submitted the case file and the report to the Tanganyika Law Society. This suggests that, the counsel was the one who was representing the applicant under legal aid before the High Court. This further suggests that the applicant prosecuted her cases through legal aid assistance due to financial constraints.

The counsel for the respondents opposed the application for a reason that the counsel for the applicant was the one who represent the applicant in the High Court and requested a copy of the Ruling and lodge the notice of appeal, he could have all the chances of filing the application for leave to appeal to the Court of Appeal. He also contended that the applicant did not submit any proof to show that she requested the legal aid from Tanganyika Law Society. Therefore he contended that the



applicant did not show good cause for delay and did not account for each day of delay.

After carefully scrutinizing the applicant's affidavit and the respective submissions of her advocate as well as the respondents reply together with the submissions, it is my considered opinion that, the applicant has sufficiently explained why she could not timely file the application for leave to appeal to the Court of Appeal.

As it was rightly submitted by the counsel for the applicant, in practice the request for application of legal aid is done orally. The fact that the applicant had requested the legal aid is proved by Annexure GEM 3 of the applicant's affidavit which is a response from the Tanganyika Law Society to show that her request for legal aid assistance has been granted. The said Annexure is a clear evidence that the applicant had made an application for legal aid assistance and since the letter did not refer the mode of the application done by the applicant, I have every reason to believe that the application was done orally as it was submitted by the applicant's counsel.

There is yet another explanation that the applicant's counsel after representing the applicant to the High Court and after the matter being decided he wrote the report and submit the file to Tanganyika Law Society,



This suggests that after representing the applicant, the counsel ought to submit what transpired in the High Court and the outcome of the result. For that reason he could not proceed to represent the applicant under legal aid in the next level unless he is authorized to do so. I entirely agree with the applicant's counsel that he assisted the applicant to request a copy of judgement and lodge a notice of appeal in order to arrest time as she had shown her dissatisfaction with the decision of this court.

On accounting for each day of delay the applicant deponed on paragraph 6, 7, 8, 9 and 10 of her affidavit. That the main reason being financial constraints and the applicant managed to show the series of events from the date she presented her application for legal aid to the date when she received the response that her request was granted. From that day, the applicant show how promptly she filed the present application as the same was filed within two days that is on 10<sup>th</sup> November 2021 but the same could not be processed as the applicant was also seeking court fees exemption until on 25/11/2021 when this application was filed.

The Court of Appeal of Tanzania in the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No 214/18 of 2020, CAT at Dares Salaam held that, the applicant's plea of financial





constraints can not be taken to be insignificant as it was taken as sufficiently demonstrated that the applicant delay is exceptionally excusable.

Again quoted with the approval in the case of **Constantine Victor** (supra), the Court of Appeal in the case of **Yusuf Same and Another v Hadija Yusufu**, Civil Appeal No 1 of 2002 (unreported) held that:

*"... We are aware that financial constraints is not sufficient ground for extension of time, See Zabitiskawaka v Abdul Karim (EACA), Civil Appeal No 18 of 1937. But in the circumstances of this case at hand, where the respondent was a widow, depending on a legal aid her plea of financial constraints can not be held insignificant."*

Guided by the above decision for all that have been said by the applicant, it is my view that the applicant managed to account for each day of delay as her delay was due to financial constraints which resulted her to seek legal aid assistance. Consequently, the application for extension of time is meritorious, it is hereby allowed.

In the second limb, the applicant prays this court leave to appeal to the Court of Appeal. The applicant believed that there are triable issues before the Court of Appeal emanated from the impugned decision of this court. The applicant had deponed in her affidavit at paragraph 15 that there are serious issues to be determined by the Court of Appeal including the issue of the applicant being barred by law from seeking extension of





time on dismissed application, if the applicant was afforded right to be heard and failure of the court to evaluate the evidence.

The counsel for the respondents objected the application on the reason that the parties were given the right to be heard, that the issue of time barred application which has been dismissed is already settled and that the applicant ought to state which evidence was not properly evaluated.

Having in mind that in the application for leave to appeal to the Court of Appeal, I am not called to determine the merits of the decision sought to be appealed against but to see if the intended appeal is arguable either on facts or law and this is because, in the determination of this application, I have no jurisdiction to go into merits or deficient of the judgment as it was stated in the case of **Hamis Mgida & Another vs The Registered trustee of Islamic Foundation**, Civil Appeal No.323 of 2018, the court pointed out that

*"..the application for leave must state succinctly the factual or legal issues arising from the matter and demonstrate to the court that the proposed ground of appeal merits an appeal. The court concerned should decide whether the said proposed grounds are prima facie worth of the consideration of the court of appeal."*



Revisiting the facts in the instant application and without expressing any opinion, it is my view that the applicant has demonstrated sufficient grounds to invoke the appellate jurisdiction of the Court of Appeal.

In my view, once an appeal is eventually lodged, the Court of Appeal will have to determine issues such as whether the applicant was denied right to be heard, whether the applicant is barred by law from seeking extension of time on dismissed application and whether the evidence presented before this court was not properly evaluated. It is my view that the third issue will be captured by the court of appeal when adjudicating the above two issues.

Thus, I do not think if the above issues that have been also raised in paragraph 15 and 16 of the applicant's affidavit are not serious enough to be determined by the Court of Appeal. In the circumstances, I do hereby exercise my discretion under section 5(1) (c) of Cap. 141 [RE: 2019] to grant leave to the applicant to appeal to the Court of Appeal.

In the final analysis, all the applicant's application in the present application are hereby granted.

It is so ordered.



**M.MNYUKWA**  
**JUDGE**  
**23/03/2022**

Ruling delivered on 23<sup>rd</sup> day of March, 2022 in the presence of the advocate of the applicant and in the absence of the respondents.

A handwritten signature in blue ink, appearing to be 'M. Mnyukwa', is positioned above the printed name.

**M.MNYUKWA**  
**JUDGE**  
**23/03/2022**