

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA**

MISCELLANEOUS LAND APPLICATION NO.28 OF 2021

**THE BOARD OF TRUSTEES OF THE FREE PENTECOSTAL
CHURCH OF TANZANIA APPLICANT**

VERSUS

ASHA SELEMANI CHAMBANDA1ST RESPONDENT

RASHID SELEMANI CHAMBANDA2ND RESPONDENT

Date of Last Order: 23/05/2022

Date of Ruling: 26/05/2022.

RULING

MURUKE, J

Application filed application for extension of time within which to file application for leave to the Court of Appeal. Application is supported by an affidavit sworn by Peter Nyangi, counsel for the applicant. On the date set for hearing applicant was represented by Advocate Peter Nyangi, while respondents were in persons.

Supporting the application Advocate Peter Nyangi submitted that:



for application of extension of time to be granted, there are issues to be considered as was held in the case of **TRA VS. TANGO TRANSPORT LTD. Consolidated Civil Application No.4 of 2009 and 9/2008.**

Reason for delay is that; the 1st application was struck out, then file present one after 21 days. Applicant has arguable case to the Court of Appeal being failure to join Attorney General in the case. It was further submitted that; there is illegality and that same is sufficient to the court to grant extension sought, referring cases of **Kalunga & Co. Advocates Vs. NBC Ltd 2006 TLR 235** and case of **TANESCO VS. MURUNGO Leornard Majura Civil Application 94/2016 at page 14-15.** Furthermore, Applicant counsel asked this court to be guided by the principal in the case of **Loyce Butto Shushu Macdougall Vs. STUDI MAKERS Tanzania Limited & another Misc. Land application number 392/2016.**

On the other hand respondents submitted that, when decision of the High court was pronounced, they were given right to appeal on the same day, applicant were represented. Applicant on did not explain on the length of delay. Judgment was delivered on 27/11/2020. Applicant did not count for days of delay. There was no explanation of delay caused by applicant. There were present when judgment delivered, on 27/11/2020. There is no illegality of decision worth consideration by Court of Appeal. It is Applicant who was to join Attorney General on his case at Trial Tribunal. At page 3-6 of High Court Judgment, Ngwembe, J. explained in details how applicant was supposed to plead the necessary part as he was the one who complained at Trial Tribunal. Generally applicant did not give reasons in the affidavit. Applicant should not benefit from their own mistakes.



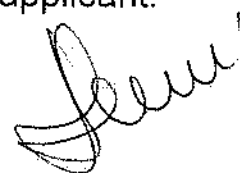
There is no point of law to be discussed by the Court of Appeal. Applicant filed dispute at trial tribunal complaining against respondent, it is now surprising, he is complaining of parties to be sued while he is the one who registered Respondent. He cannot now go back and complain that there was a need of joining Attorney general.

Having heard both parties submission, having gone through court records, it is now settled law of the land that in application for extension of time the applicant must show that there is sufficient reason/good cause for the delay. This was held in the case of **The International Airline of the United Arab Emirates v. Nassor Nassor Civil Application No.569/01 of 2019 CAT** [unreported]. Wherein at page 4 the Court had this to say:

"It is trite law that in an application for extension of time to do a certain act, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time."

The word sufficient reason has not been defined in the statute or case law but the Court in different cases has provided grounds/factors to be taken into account to ascertain whether there is good cause for extending time. In the cases of the **International Airline of the United Arab Emirates V. Nassor Nassor Civil Application No.569/01 of 2019 CAT** [unreported] and **Lyamuya Construction Company Ltd V. Board of Registered Trustees of Young Women's Christian Association of Tanzania Civil Appeal No.2 of 2020 (unreported)**. The court pointed out the following factors

- i. whether the application has been brought promptly.
- ii. Whether there was diligence on part of the applicant.



- iii. Whether the applicant has accounted for each and every day delayed.
- iv. Whether the delay is inordinate
- v. Whether there is existence of a point of law e.g legality of the decision being challenged.
- vi. Whether the application has been brought promptly.

Conduct by the applicant from when decision was pronounced on 27/11/2020 to the date of filing application on 20/10/2021 does not fit in the conditions set out by the case of **Lyamuya Construction** (supra). It is obvious that the applicant has never been diligent in prosecuting this case. The applicant has shown negligence, inaction and sloppiness, which does not constitute good cause for the delay. The Court in the case of **Dr. Ally Shabhay versus Tanga Bohora Jamaat [1997] TLR 305**, held that;

"Those who wishes to come to court of law must not show unnecessary delay in doing so especially where a prescribed limitation period is provided by the law they must show due diligence."

The Court in the case of **Paul Martin vs. Bertha Anderson, Civil Application No.7 of 2005** [unreported] held as follows;

"Negligence, as no doubt Messers Mkongwa and Stolla, learned counsel for both parties are aware, does not constitute sufficient reason to warrant the courts exercise of its discretion to grant extension of time."

Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania Civil Appeal No.2 of 2010 Court held as follows;



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

The applicant has not shown as to what he was doing all this time approximately 53 days. Same was held in the case of **Ludger Bernard Nyoni Vs. NHC Civil Application No.372/01/2018 Court of Appeal Dar es Salaam page 7 para 2** that;

"It is settled that in an application for enlargement of time, the applicant has to account for everyday of the delay involved and that failure to do so would result in the dismissal of the application."

Principal of counting days of delay was also discussed in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis Civil Reference No.8 of 2016** wherein the Court cited with approval the case of **Bushiri Hassan vs. Latifa Mashayo, Civil Application No.3 of 2007** the Court at page 9 held that;

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

The court has held times without number that ignorance of law is not sufficient reasons for extension of time. In the case of **Hadija Adamu v. Godbless Tumba, Civil Application No.14 of 2013** [unreported] the Court stated as follows;

"As regard the applicant's ignorance of law and its attendant rules of procedure, I wish to briefly observe that such ignorance has never been accepted as a sufficient reason."



Similar observation was made in the case of **Ngao Godwin Losero vs. Julius Mwarabu, Civil Application No.10 of 2015** [unreported] in which the Court stated that:

"As has been held times out of number, ignorance of law has never featured as a good cause for extension of time."

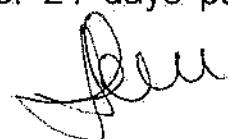
Moreover, the Court of Appeal in the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others v. The Republic Criminal Application No.121/07 of 2018 CAT at Mtwara** [unreported] while citing with approval the case of **Charles Salugi vs. The Republic Criminal Application No.3 of 2011 at page 5** had this to say;

"to say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."

The Court of Appeal was again faced with similar situation in the case of **A.H. Muhimbira and 2 others v. John K. Mwanguku Civil Application No. 13 of 2005 Mbeya (unreported)** wherein the applicant had filed incompetent application in court which was struck out. In applying for extension of time the applicant advanced it as a reason for extension of time, the Court refused to entertain such ground and at page 8 of the ruling the Court had this to say;

"on the other hand, even if it is accepted that the applicants themselves did not know the correct legal position to follow, it is trite principle that ignorance of legal procedure would also not constitute sufficient reason for extending time."

Applicant has completely failed to advance sufficient reason to warrant extension of time. Not only has not accounted for 21 days passed from



when first application was struck out, to the date of filling present application but he has not given sufficient reasons. The Applicant has exhibited high degree of negligence and inaction which does not constitute good cause for extension of time. The applicant has not disclosed any sufficient reasons which this court may grant extension of time. This application lacks sufficient cause, same is dismissed, with costs.

Ordered accordingly.




Z.G. Muruke

Judge

26/05/2022

Ruling delivered in the presence of Peter Nyangi counsel for the Applicant and Respondents in persons.




Z.G. Muruke

Judge

26/05/2022