

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**MISC. LAND APPLICATION NO. 05 OF 2023**

*(Originating Land Appeal case No. 62 of 2020 in the High court of Tanzania at Mwanza)*

**CLEMENT MARUSHWA.....1<sup>ST</sup> APPLICANT**

**VENERANDA HERMAN COSMAS .....2<sup>ND</sup> APPLICANT**

***VERSUS***

**ROBERT MAZIBA.....RESPONDENT**

**RULING**

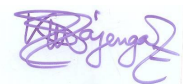
*22<sup>th</sup> February & 22<sup>th</sup> February 2023*

***Kilekamajenga, J.***

The applicant seeks the following orders:-

- 1. That, the Honourable Court be pleased to extend time within which for the applicants to file an application for leave to appeal to the Court of Appeal out of time, from the judgment of this Honourable court in Land Appeal No. 62 of 2020.*
- 2. Costs of the application to be provided for.*
- 3. That, other orders and relief the court deems fit to grant.*

The application was made under Section 14(1) of the Law of Limitation Act [Cap. 89 R.E. 2019] and other enabling provisions of the law, the same is supported with an affidavit of the 1<sup>st</sup> and second applicants. Before this court, the 1<sup>st</sup> applicant appeared in person and without legal representation. He further alleged to be



empowered by the second applicant to represent her in this matter. This court ordered the matter to proceed for hearing.

In his oral submission, the first applicant argued that this court delivered its decision on 18/07/2022 and that, he was supposed to lodge an application for leave to approach the Court of Appeal. However, on 28/07/2022, the first applicant lodged a notice of Appeal to the Court of Appeal and further filed an application seeking certificate on point of law to approach the Court of Appeal but the application was struck out on 12/10/2022. Thereafter, the applicants filed the instant application on 09/01/2022. Thereafter, he urged the Court to consider the affidavit in support of the application and grant the extension of time.

In response, the learned Advocate, Mr. Masoud Mwanaupanga objected the application arguing that, when the application on point of law was struck out on 13/10/2022, the applicants filed the instant application on 25/01/2023. Under the law, the applicant was supposed to account for each day of delay as stated in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016, CAT at Dar es Salaam.

The counsel further argued that, the 1<sup>st</sup> applicant alleged sickness and financial incapacity as a reason for the delay. However, under the principle of the law stated in the case of **Yusufu Same and Another V. Hadija Yusuf**, Civil Appeal No. 1 of 2002, CAT, (Unreported) financial constraint is not a sufficient cause for the delay. Furthermore, the document in support of the sickness is of Zephrianus Marushwa and not of the 1<sup>st</sup> applicant. That the 1<sup>st</sup> applicant was not diligent in perusing this matter. The 1<sup>st</sup> applicant further alleged illegality which is not clarified nor stated. The counsel urged the court to dismiss the application with costs. In the rejoinder, the 1<sup>st</sup> applicant urged the court to reject the respondent's counter affidavit for lack of merit. He further insisted that, his name is Zephrianus Marushwa and that the instant application was filed on 09/01/2023.

This application moves the court to determine whether the applicants have advanced sufficient cause for the delay. I am aware that, extension of time is the discretion of the court which however, must be granted upon the applicant advancing sufficient cause for the delay. In his case, the applicants advanced sickness, illegality and financial constraints as reasons for the delay. In the 1<sup>st</sup> applicant's affidavit, he alleged that he was sick and given rest order for 22 days and that, he opted for local herbs. He further alleged to have been under heart attack on 29/11/2022. However, these seems to be mere allegations as there is

no document to support whether he was actually sick. The document alleged to support the sickness is of Zephrinus Marushwa and not Clement Marushwa. In law, these are two distinctive persons. On the allegation of financial constraint, as rightly argued by the counsel for the respondent, it is not a sufficient cause for extension of time.

In the case of **Yusuf Same** (Supra), the Court of Appeal stated that:-

*"We are aware that financial constraint is not a sufficient ground for extension of time".*

The 1<sup>st</sup> applicant alleged existence of illegality. However, such illegality was not disclosed. Upon further inquiry, the 1<sup>st</sup> applicant believed that, the decision being in favour of his adversary is an illegality. I am aware that illegality is a sufficient ground for extension of time. However, such an illegality must be perceivable or apparent but not a mere dissatisfaction of the decision being appealed against.

I further perused the court record and it is undisputed that, the applicants applied for certificate on point of law and the application was struck out on 13/10/2022 but the instant application was filed on 09/01/2023 that is after almost three months. As stated by the counsel for the respondent, the applicants failed to account for each day of delay. In the case of **Bushfire Hassan V. Latina Lucia**

**Masanya**, Civil Application No. 3 of 2002 (unreported) which was quoted with approach in the case of **Wambele** (Supra) the Court of Appeal stated that:-

*"Delay of even 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".*

In the instant Application, I find the applicants negligent in persuading their case and at best, failed to advance sufficient cause for the delay nor account for each day of delay. I hereby dismiss the application with costs. It is so ordered.

**DATED** at **Mwanza** this 22<sup>th</sup> day of February, 2023.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**22/02/2023**



**Court:**

Ruling delivered this 22<sup>th</sup> February 2023 in the presence of the 1<sup>st</sup> applicant and the counsel for the respondent, Mr. Masoud Mwanaupanga (Adv)



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**22/02/2023**

