IN THE HIGH COURT OF TANZANIA

DODOMA SUB- REGISTRY

AT DODOMA

MISC.LAND APPLICATION NO.76 OF 2022

1. **SAAD SALEHE MSANGI**
2. **OMARY SHABAN S. NYAMBU**
3. **SALUM M. BUKO**
4. **OMARY SHABAN S. NYAMBU**
   REHEMA SHABAN S. NYAMBU (as admin. of Mwajuma Omary Bido)
5. **MARYAM IDDI SAID**
6. **IDDI SAID DANDA**
7. **ATHUMANI ABDALLAH ATHUMANI**
8. **PETER MWALIGUNGA**
9. **OMARY SHABAN S. NYAMBU**
   MWAJUMA MOHAMED CHONDO (as admin. of Asha Salim Nyambu)
10. **HASAN SHABAN S. NYAMBU**
11. **BAKARI OMARY HELA**
12. **OMARY BAKARI HELA**
13. **SALUM RAMADHAN KIJAJI (as admin. of Athumani Omary Lula)**
14. **MWAMINI ALLY CHAMOTO (as admin. of Msafiri Ally Chamoto)**
15. **PETER NDOYOLA**
16. **BERYA MGONJA**
17. **REHEMA SHABANI S. NYAMBU**
18. **REHEMA SHABANI S. NYAMBU (as Admin.of Adam Ally Kilili**
19. **KHADIJA ALLY ATHUMANI**
20. **TATU IBRAHIM NGANGA**
21. **SALIM SHABAN S. NYAMBU**
22. **HASSAN SHABANI S. NYAMBU (as admin. Of Ally Hamis S. Nyambu)**
23. **ZENA IBRAHIM ATHUMANI**
24. **SHABANI SALIM NYAMBU**
25. **IDDI SAID MUSA**

26. RAMADHANI SHABAN S. NYAMBU
27. SALIM IDDI S. NYAMBU
28. SALIM IDDI S. NYAMBU (as admin.of Iddi Salim Nyambu).....APPLICANTS

VERSUS

1. DODOMA URBAN DISTRICT COMMISSIONER
2. THE HONOURABLE ATTORNEY GENERAL.....RESPONDENTS

(Application from the Ruling of the High Court of Tanzania at Dodoma)

(A. J. Mambi, J)

Dated 28th day of March,2022

In

Land Review No.1 of 2020

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RULING

13th December, 2022 & 1st March, 2023

HASSAN, J.:

The above-named Applicants have lodged this application seeking for an order to grant extension of time to lodge an application for Review in respect of the decision of the High Court delivered on 24th July, 2020, in Land Case No. 9 of 2019. The application is brought by way of chamber summons encompassed with an affidavit lodged on 31st August, 2022 under the provisions of section 14 (1) of the Law of Limitation Act, Cap. 89 R.E 2022. The affidavit was deponed on 26th of August, 2022 by Abraham Hamza Senguji and Twaha Issa Taslima, both are Learned Advocates for the Applicants.

Briefly, the factual background of this application are as follows: The Applicants filed the Land Case No 9 of 2019 on 31st July, 2019 seeking for

declaration that the Makutupora basin which compromises of Mzakwe, Mchemwa and Gawaye Villages was legally owned by the Applicants. Before hearing commence, the Respondents raised Preliminary Objections that the said suit was preferred beyond the time prescribed by law. As a result, on 24th July, 2020 before Hon. Lady justice Mansoor, the said suit was dismissed with costs for being preferred beyond the time prescribed by the law.

Being aggrieved, under rule 83 (1) of the Court of Appeal Rules, the Applicants issued a Notice of Intention to Appeal to the Court of Appeal of Tanzania Dodoma Sub-registry on the 6th August, 2020 contesting the decision.

Subsequently, before the appeal was finally determined by the Court of Appeal, or the same being withdrawn, the applicants lodged the Land Review No. 1 of 2020 in this court on 11th May, 2021. Again, the Respondents raised Preliminary objection against the said Land Review.

After hearing the parties, the Learned High Court Judge A. J. Mambi sustained the preliminary objection in the ruling delivered on 28th March, 2022. He dismissed the application on the ground that the Notice of an Intention to Appeal was lodged on the 6th day of August, 2020 and it was still pending in the Court of Appeal of Tanzania. Hence, the application for

review became futile since it was lodged in violation of rule 83 (1) of the Court of Appeal's Rules 2009.

After that decision, on 21st July, 2022, the applicant's recourse to file a notice of withdrawal of the notice of intended appeal to the Court of Appeal of Tanzania. The same was promptly granted on 27th July, 2022.

Still searching for redress, the applicants now come before this court with Misc. Land Application No. 76 of 2022 seeking for order to enlarge time for applicants to file application for review in respect of Land Case No. 9 of 2019 which was dismissed by Hon. Lady Justice Mansoor on 24th July, 2020.

Primarily, the matter was attended by Hon. Judge Kagomba, where on 3rd October, 2022 parties prayed this application be disposed by way of written submissions. Following the prayers by the parties, the Court made an order to grant the same and set the schedule. To be Grateful, parties herein complied with the orders of the court and filed their submissions promptly.

Submitting in support of the application, the Applicants in their written submission stated that, the grounds for delay of filling the review within prescribed time are well illustrated in the affidavit sworn and affirmed by the Applicants Advocates. The Applicants then briefly clarified

that, they filed land case No.9 of 2019 in this Court seeking a declaration that the Makutupora basin which comprise of Mzakwe, Mchemwa and Gawaye villages were rightly owned by the Applicants. The said land Case was dismissed for being incompetent. On 9th December, 2020 the Applicants collected the certified copies of the Ruling and proceedings but there was an apparent error on the face of the record of the High Court in Land Case No.9 of 2019. The Applicants also discovered that the remedy was to file review instead of Appeal to the Court of Appeal.

By knowing that, then they filed the Land Review No.1 of 2020 which was also dismissed after the Respondents raised the preliminary objection that there was still a notice of appeal pending in the Court of Appeal of Tanzania. To them, the Learned Judge contravened Rule 91(a) of the Court of Appeal Rules, 2009 by dismissing Land Review No.1 of 2020 on the ground that the Notice of Appeal was still pending in the Court of Appeal.

They argued that the delay was not inordinate as the Applicants were waiting to be supplied the necessary documents. The applicants stated further that, Land Review No.1 of 2020 was filed within time and determined on 28th March, 2022, but the said review passed through three Honourable judges before its final determination, and that was caused by

the Court itself. They prayed this application be allowed and an extension of time within which to challenge Land Review No.1 of 2020 be granted.

To the applicant's believe, this is illegality and it is a ground which constitute sufficient cause for extension of time. To cement their assertion, the applicants cited the Case of **Ngao Godwin Losero v. Julius Mwarabi, Civil Application No. 10 of 2015** and the case of **The Principal Secretary, Ministry of Defence and National Service v. Deviam Valambia (1991) TLR 387** to support point of illegality.

In reply, the Respondents initially prayed that the counter affidavit deponed by the learned Senior State Attorney Cumilius Ruhinda be adopted to form part of their submission. The Respondents opposed the application because the Applicants have not demonstrated sufficient reasons for delay.

On the issue of illegality, they submitted that, for illegality to constitute a good cause for extension of time, it has to be on the face of record. In their view, the foregoing illegality is not the one covered by the development of jurisprudence in our jurisdiction. The said illegality should be supposedly clear on the face of the impugned decision not on a long-drawn arguments. Respondents averred that in the case of **Ngao Godwin** (supra) which was cited by the Applicants, is that, the application

for extension of time was dismissed based on illegalities for misdirection or non-direction on the point of law which was not clear on the face of the decision.

The respondents cited the case of **Chandrakant Joshubhai Patel v. Republic, (2004) TLR. 219** reads together with the case of ***The Hon. Attorney General v. Mwahezi Mohamde (As Administrator of Estate of the late Dolly Maria Eustace) Civil Application No. 314/12 of 2020 (unreported)*** where at page 13 and 14, the Court of Appeal elaborated that:

> *"An error on the face of record need be an error that can be seen by one who runs and reads, an obvious and patent misstate and not something that can be established by long drawn processes of reasoning which might lead into more than option".*

In respect of contravening of Rule 91(a) of the Court of Appeal Rules, 2009, the respondents submitted that, even if such illegality constitutes a sufficient cause the provision of the said Rule is misinterpreted by the Applicants. In paragraph 4 of the Applicants affidavit, they contended that on 6th August, 2020 they lodged a notice of appeal whereas in paragraph 8 of the affidavit they alleged that on 24th August, 2020 they lodged an

application for Review of the same decision without first withdrawing the said notice of appeal. On that the respondents argued further that, the Applicants were not supposed to institute review while the notice of appeal was still pending within 18 days since it was lodged. The Applicants did not do diligent research before following the appropriate remedy as pleaded in paragraph 7 of the affidavit. Respondents further said that, in **Lyamuya Construction 's Case** (supra), it was maintained that the Applicants must account for each day of delay. In their view, the decision which is subject to this application was delivered on 28th March, 2022, but the Applicants in their affidavit and submissions did not account for the delay as from the day this application was instituted on 31st August, 2022.

Therefore, the delay is inordinate and applicants shows the negligence and ignorance of the law which can never be an excuse taking into account that the mistake was done by lawyer who is an expert on the proper procedures before the court. The respondents cited the case of ***Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016, CAT at Dar es salaam (unreported)*** where it was held that:

> *"It is already a well settled rule since more than ten years ago in unbroken chain of this Courts decisions to the effect that in the application of this nature the*

applicant is obliged to account for the delay for everyday within the prescribed period".

They further cited the case of **Tanzania Fish Processors Limited v. Eusto K. Ntagalinda, Civil Application No. 41/08 of 2018, CAT at Mwanza (Unreported)** where the Court of Appeal of Tanzania considered the issue of real and actual delay as 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."

They concluded that, the fact that the notice of appeal was still pending is of no essence for the Applicants to wait for institution of this application. As in their pleadings, the applicants agree that the notice had already expired for failure to institute an appeal and again the notice has no connection with an application for review to justify a late filling of this application.

In rejoinder, the Applicants reiterated what they submitted earlier and emphasized on the issue of illegality. They then cited the case of **Secretary Ministry of Defence and National Services v. Devram Valambia (1992) TLR 182** and the case of **VIP Enginnering and**

Marketing Limited v. Citibank Limited, consolidated with **Civil Reference No.6 of 2006,** referred again by the Court of Appeal of Tanzania from the case of **Arunaben Chaggan Ministry v. Naushad Mohamed and Another, Civil Application No. 6 of 2016 (unreported)**, to cement their point of illegality. They added that the alleged illegality in their application is sufficient reason for this court to exercise its discretionary power to grant extension of time.

Furthermore, they cited the case of **Regional Manager Tan roads Kagera v. Ruaha Concrete Company ltd, Civil reference No. 96 of 2007 (unreported**) and the case of **John Peter and Another v. Republic, Misc. Criminal Application No. 123 of 2020 (unreported)** where the issue of sufficient cause to grant extension of time was determined. In their considered opinion, illegality amount to sufficient cause to grant extension of time.

Going from the above, considering what was submitted by both counsel in their affidavit and counter affidavit, the issue for determination by the court is whether or not the Applicants have demonstrated a good and sufficient cause for delay to allow the court to extend time to file application for review.

It is evident that the application before me is premised under the provisions of Section 14(1) of The Law of Limitation Act Cap 89 R. E 2002. The said provisions empowers the Court to exercise its discretion in granting extension of time if the applicants adduced good cause to justify the delay. For precision, I have endeavored to reproduce the said provision herein below:

> *14.-(1) Notwithstanding the provisions of this Act,* ***the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application****, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application."*

Therefore, the requirement which the Applicants have to satisfy the court under the above cited provision of the law is to show good cause for delay in filling the application. There are numerous authorities to this effect, which include: **Kalunga and Company Advocates Ltd v.**

National Bank of Commerce Ltd (2006) TLR. 235; Lyamuya Constructions Company Ltd v. Board of Registered Trustees of Young Womens Christian Association of Tanzania, Civil Application No.02 of 2010; and **Attorney General v. Tanzania Ports Authority and Another, Civil Application No.87 of 2016(both unreported),** just to mention a few.

It also premised that, in exercising its discretion of whether or not to grant extension of time, the court is required to exercise it judicially while guided by such factors which may not be exhaustive. See the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Womens Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)** where at page 6 of the ruling, the same was listed as such:

1. *The Applicant must account for all the period of delay,*
2. *The delay should not be inordinate,*
3. *The Applicant must show diligence, and not apathy, negligence or sloppiness of the action that he intends to take.*
4. *If the court feels that there are other sufficient reasons, such as existence of a point of law of*

sufficient importance such as the illegality of the decision sought to be challenged."

Moving back to the application at hand, from paragraph 2 up to 14 of the Applicant's affidavit, it reveals the facts that applicants deposed to be the cause for delay. Also, the applicants pointed out that illegality of the decision pronounced by the Hon. Judge Mambi is another reason for this court to grant extension of time to file an application for review.

By observing reasons fronted by the applicants, asking for the court sympathy to grant extension of time, I will start with the course of delay. Basically, the applicants averred that, on 31st July, 2019 the Applicants filed Land Case No. 9 of 2019 and it was dismissed after the Respondents raised Preliminary Objection that it was time barred. Then, being aggrieved by the decision, the applicants instituted a Notice of Intention to Appeal to the Court of Appeal of Tanzania on 6th August, 2020.

It follows, soon after that, on 27th August, 2020 the applicants were called to collect the certified copy of proceedings, Ruling of the Court and certificate of delay. On 9th September, 2020 the Applicants were supplied with certificate of delay, certified copy of proceedings, Ruling and drawn order. Then on 24th August, 2020 the Applicants filed Land Review No.1 of 2020.

The application for Land Review No.1 of 2020 was dismissed for the reason that, the notice of appeal to the Court of Appeal was still pending in the court. Awakened by this decision of the court, the Applicants applied to withdraw the notice of appeal on 21st July, 2022. Consequently, the same was marked withdrawn on 27th July, 2022, and the decision was promptly communicated to the applicants.

Going from the above, it takes me time to spot the sequential profiling of the matter since it started with the main suit (Land Case No. 9 of 2019) filed on 31st July, 2019 in order to satisfy myself if the applicants acted responsibly to account for each day of delay as required by law. Hence, looking on the records of proceedings it shows that, ruling for the Land Review No.1 of 2020 was delivered on 28th March, 2022. And on 21st July, 2022, the Applicants applied to withdraw the notice of appeal to the Court of Appeal. Luckily, on 27th July, 2022 the notice of appeal was withdrawn.

Here, the issue to be mindful of, is whether or not the applicants acted immediately after the pronouncement of the Ruling to dismiss the application for land review on 28th March, 2022?

Apparently, it is on the record that, accounting the days from when ruling was delivered (on 28th March, 2022) to the date of filling the notice

to withdraw the notice of appeal to the Court of Appeal (on 21st July, 2022), notably, the over-all of **157** days has elapsed. The reason given by the applicants for such a delay is that, the delay was due to the time spent to prepare an application for withdrawal of the notice of appeal to the court of appeal.

In the circumstance, it should be born in mind that it is a settled principle in our law that in case of delay to file an application or appeal then each day of delay has to be accounted for. In the case of **Mwakalinga v. Domina Kagaruki and 5 Others, Civil Application No.120/12 of 2018**, the Court of Appeal cited the case of **Bushiri Hassan v Latifa Lukio Mashayo,** observed that:

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

In the instant matter, the Applicants were required to account for each day of delay out of 157 days as to the requirement of the law from 28th Mach, 2022 to 21st July, 2022.

In my view, and so I hold, that the excuse given above by the applicants, that the delay was due to the time spent to prepare notice

to withdraw a notice of appeal to the Court of Appeal is indefensible. Reasonably, in my humble opinion, one could have taken hardly one to two days or even for being reasonably late, at least a week to accomplish the same. Thus, taking 157 days just to prepare and submit the said notice of withdrawal is an unacceptable delay. Worth enough, the applicants scarfed themselves by not pointing out and justify the same in their submission.

In the similar vein, the applicants have failed to signpost and justify the delay observed from when the notice of appeal was marked withdrawn and communicated to the applicants on 27th July, 2022, to the date of filling the instant application on 31st August, 2022. Accounting the days between the gap, 36 days has elapsed. As it was held in **Mwakalinga v. Domina Kagaruki and 5 Others** (supra), see also the recent decision in the **Attorney General v. Emmanuel Marangakisi (as Attorney of Anastansious Anagnostou) & 3 Others, Civil Application No. 138 Of 2019** (unreported), delivered in Dar es Salaam on the 23rd day of February, 2023, where the duty of the applicant (s) to account for each day of delay when applying for extension of time was bleeped.

On the issue of illegality, the applicants avowed that the Learned Judge contravened Rule 91(a) of the Court of Appeal Rules, 2009 by dismissing Land Review No.1 of 2020 on the ground that the Notice of

Appeal was still pending in the Court of Appeal. To the applicant's believe, this was serious illegality and is a ground which constitute sufficient cause for extension of time. To cement their assertion, the applicants cited the Case of **Ngao Godwin Losero v. Julius Mwarabi, Civil Application No. 10 of 2015** and the case of **The Principal Secretary, Ministry of Defence and National Service v. Deviam Valambia (1991) TLR 387** to support point of illegality.

In response, the Respondents opposed the issue of illegality, and they submitted that, for illegality to constitute a good cause for extension of time, it has to be on the face of record. In their view, the foregoing illegality is not the one covered by the development of jurisprudence in our jurisdiction. The said illegality is supposedly being clear on the face of the impugned decision not on a long-drawn arguments. Respondents averred that in the case of **Ngao** (supra) which was cited by the Applicants, is that, the application for extension of time was dismissed based on illegalities on misdirection or non-direction on the point of law which was not clear on the face of the decision. To support the argument, the respondents cited the case of **Chandrakant Joshubhai Patel;** reads together with the case of **The Hon. Attorney General v. Mwahezi Mohamde** (supra).

In this respect, taking the rivals' submission on board, the court observed the following: Looking on the record of application and submissions and the disputed ruling in Land Review No.1 of 2020, keenly to ascertain whether or not there is any illegality on the face of record. My perusal to the record ends in vain. Conspicuously, there is no illegality noted.

Markedly, I have observed that there was misdirection on the part of the applicants with respect to the date of which the notice of Intention to appeal to the Court of Appeal was filed. In their submission at page 4 paragraph 2 from bottom, the applicants indicated that the notice of an Intention to appeal to the Court of Appeal was lodged on the **6th day of August, 2019**, that is more than two years elapsed. That fact was wrong and misleading. As it appears in the record, the correct date of which the notice of an Intention to appeal was lodged to the Court of Appeal is on the 6th day of August, 2020. That is, only 28 days from the date a notice of an Intention to appeal to the Court of Appeal was lodged and the ruling to dismiss the application for review was delivered.

To that end, it is apparent that the application of Rule 91(a) of the Court of Appeal Rules, 2009 will go belly up. For clarity Rule 91(a) provides that:

"(91) *If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time –*

a) He shall be deemed to have withdrawn his notice of appeal and shall, unless the court order otherwise be liable to pay the costs of any person on whom the notice of appeal was served arising from that failure to institute the appeal".

Meaning that, by the time the application for review was filed only 28 days has elapsed since a notice of an Intention to appeal to the Court of Appeal was lodged. Thus, by the time application for review was filed a notice of appeal was pretty much in its surviving age. Therefore, time was still ticking for the applicants to institute the appeal in terms of rule 90 (1) (a)(b)(c) of the Rules, which provide:

"90. (1) Subject to the provisions of Rule 128, ***an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged with–***

(a) a memorandum of appeal in quintuplicate;

(b) the record of appeal in quintuplicate;

(c) security for the costs of the appeal, save that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery of that copy to the appellant.

Couched from the above, it is obvious that the only time a notice of an intention to appeal could end its lifespan is when the application for withdraw is lodged and marked withdrawn or appeal is finally determined.

In the circumstances, considering what I have ventured herein-above, I am of the view that the Applicants have not been able to establish any sufficient cause for delay to warrant enlargement of time by the court. Seemingly, I have noted with sympathy the slog the applicants have been through looking for redress of this matter. But unfortunately, courts are not allowed to issue orders on a sympathetic basis when the said parties have failed to follow the law. Consequently, this application is dismissed with costs.

It is so ordered.

S. H. HASSAN

JUDGE

01/03/2023

DATED at **DODODMA** this 1st day of March, 2023.

S. H. HASSAN

JUDGE

01/03/2023