

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 13 OF 2023**

*(Arising from the decision in the Miscellaneous Land Appeal No. 71 of 2021 of the High Court of Tanzania before Hon. A. A. Mbagwa Judge)*

**OBIERO CHACHA..... APPLICANT**

**VERSUS**

**YOHANA WILSON.....1<sup>ST</sup> RESPONDENT**

**MAIRA WILSON.....2<sup>ND</sup> RESPONDENT**

**OKEMBA ABUR.....3<sup>RD</sup> RESPONDENT**

**CLEOPHAS O. WARIATO.....4<sup>TH</sup> RESPONDENT**

**JESHI MASIGE.....5<sup>TH</sup> RESPONDENT**

**RULING**

*03<sup>th</sup> & 08<sup>th</sup> March, 2023*

**M. L. Komba, J.:**

Applicant in this application was dissatisfied by the decision of this court, Mbagwa J. in Misc. Land Appeal No. 71 of 2021, he came seeking for the leave of the court so that he can file an application for certification of point of law. His application which was made under Section 11(1) of the appellate Jurisdiction Act Cap 141 R. E 2019, was supported by the affidavit of Obiero Chacha

Applicant appeared in person while all respondents were represented by Ms. Florida Makaya an advocate. Making the ball roll an applicant informed the court he was dissatisfied by the decision of this court in Misc. Land Appeal No. 71 of 2021 and applied for the copy of judgement which was received very later. He further submitted that after finalizing the filling process he was given the filling cost to the tune of Tsh.50,000/ which was too high and was forced to sell his livestock in a local auction to raise up his income. That was 13/01/2023 and that he got complications on the use of mobile money till 16/01/2023 only to be informed by the mobile money agent that control number has expired. He said he was not idle all the time he was making a follow up so that he can pay on time but it was beyond his control.

It was his submission that he is dissatisfied by the finding of the High Court that one assessor gave his opinion in decision while he did not participate in the hearing. He said he did not agree with that finding because that assessor opined in favour for the respondents although he (applicant) won the case. He doesn't find the reason of re-trial as he was declared the lawful owner of the disputed land.

In contest of the application Ms. Makaya while pray the court to adopt counter affidavit she submitted that the reasons listed by the applicant for extension of time for certification is baseless and they are not among the elements to be considered in enlargement of time as provided by Court of Appeal in the case of **Lyamuya Construction Company Limited vs. the Board of Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported) as re cited in the case of **TCCIA Investment Company Ltd vs. Dr. Gideon H. Kaunda**, Civil Appeal No. 310 of 2019 that in order for the court to grant extension of time should consider four elements that;

- (i) Applicant must account for all the period of delay,*
- (ii) The delay should not be inordinate,*
- (iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and*
- (iv) If the court feels that there are other reasons, such as existance of a point of law of sufficient important, such as illegality of the decision sought to be challenged.*

She submitted that applicant applied for a copy of judgement and his excuse was on the payment of filling fee that he had to wait for the local auction

but he did not tender any receipt to show that he participated in that auction and further there is no affidavit proving that the control was really expired. The CAT in the case of **TCCIA Investment Company Ltd (supra)** insisted that if in affidavit there are story concerning the other person, there must be affidavit from that other person. See also the case of **Sabena Technics Dar Limited vs. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020 CAT at Dar es salaam.

It was Ms. Makaya's submission that applicant failed to explain what happened from 16/01/2023 as he presented application for filing on 02/02/2023. Moreover, she said there is no illegality warranting this court to issue extra time as cited in the case of **Seif Hamis Seif vs. Nassoro Mohamed Ebrahi**, Civil Appeal No.99 of 2021, CAT at Zanzibar that position of the court of appeal is that the decision which does not involve a member in hearing is not valid. She prayed the application to be dismissed with costs.

I have keenly followed the submissions advanced by both parties in this application. The duty of this court is to decide whether the application has merit.

In the cause of studying the file before hearing of the matter this court noticed that the affidavit which was filed to support chamber application had no verification clause as required by law. On that account when parties finalized their submission, I ordered them to address the court over irregularity on verification of the application.

Ms. Makaya submitted that it is the requirement of law under Order 8 rule 15 (1) of the Civil Procedure Code [Cap 33 R.E. 2019] that affidavit must have verification clause where deponent verify information which are under his knowledge and which he was informed. Lack of this clause make the affidavit incompetent and the remedy is to strike out. Interested party is at liberty to file fresh application with corrected affidavit. It was her submission that if application will be struck out, the applicant will file again and for the purpose of serving time she pray for this court to accept affidavit as the new affidavit will have the same information serve for verification clause which all the information are under his personal knowledge and that it would be fatal if contents of affidavit involve information which seem to be informed.

Mr. Obiero a lay person in law just informed the court that he swears his affidavit under order 8 of the law and pray the court to accept it so that justice could be done on his side.

The central point for determination is whether the application is fatally defective for lack of verification clause. In a recent development, the law has turned into addressing the principle of overriding objectives in our civil justice system to ensure that the substantive objective is given a higher priority. According to section 3A (2) of the Civil Procedure Code Cap. 33 as amended by Written Laws (Miscellaneous Amendment) (No. 3) Act 2018 [Act No. 8 of 2018] provides that the court shall; in the exercise of its power or the interpretation of any of its provisions, seek to give effect to the overriding objective.

The above shift is similarly reflected in various decisions of the court of appeal (see **Martin d. Kumaliya and 117 others vs. Iron and Steel LTD** which is civil application No. 70/18 of 2018 CA (Unreported), **Yakobo Magoiga Gichere vs. Peninah Yusuph Civil Appeal No. 55 of 2017 CA**, (Unreported), all these cases address the importance of applying the principle of overriding objective in the civil justice system. Because the

affidavit of the applicant contain information which is best to his personal knowledge and he is already out of time, struck it out will delay him justice bearing in mind the overriding objective principle I will continue determine the matter on merit.

Now going to the merit of the application, applicant is applying for extension of time so that he can apply for certification of the point of law. The application is filled under section 11 (1) of Appellate Jurisdiction Act, [Cap 141 R. E. 2019] which provides;

*11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.*

In essence, applications on certification on points of law are serious applications. It is not expected there to be a certification on points of law worth of determination by the Court of Appeal in the absence of serious deliberation of the same. Again, extension of time is purely discretion of

court where applicant must demonstrate good cause to warrant extension. As was elaborated in the **case of Lyamuya Construction Company Limited** (supra), among others, the applicant must account for each day of delay in filing the application.

Applicant in this application explained that the first control number expired when he was looking for assistance on using mobile money. Then there is no explanation till when he filled application on 02/02/2023 and was given control number on 03/02/2023 and the admission fee was paid 10/02/2023. Applicant did not explain what was he doing from 16/01/2023 to 02/02/2023 and again he did not explain what happened from 03/02/2023 when he was given control number to 10/02/2023 when he paid the filling fee. On the base of requiring him to account for each day of delay, this court finds that the applicant failed to demonstrate reasons for his delay.

The other area which this court need to consider is whether there is an existence of point of law worth to be considered. Applicant submitted that reason forwarded by the High Court while directing re-trial to ward tribunal is that one assessor participated in making decision while he did not participated fully on hearing. It was the applicant's submission that that



assessor missed only one day and that his opinion was in favor of the respondent. Position of the law is that assessors have to participate full in hearing of the case.

In the case of **Dorina N. Mkumwa vs. Edwin David Hamis**, Civil Appeal No. 57 of 2017, the Court of Appeal regarding application on certificate on point of law, emphasized that: -

*"It is therefore self-evident that applications for Certificates of the High Court on points of law are serious applications. Therefore, when High Court receives applications to certify point of law, we expect Rulings showing serious evaluation of the question whether what is proposed as a point of law, is worth to be certified to the Court of Appeal. This Court does not expect the certifying High Court to act as an uncritical conduit to allow whatsoever the intending appellant proposes as point of law to be perfunctorily forwarded to the Court as point of law. "*

From the submission of the applicant, he agreed that one assessor missed one day and that his opinion was in favour of the respondents. As directed in the case of **Dorina N. Mkumwa vs. Edwin David Hamis** (supra), This court must satisfy itself that there is real point of law worth certifying to be dealt with court of appeal. The point raised by the applicant cannot be certified as there is no illegality in it. It is the position of the law that

assessors need to participate fully in hearing before they are allowed to provide their opinion.

From the above analysis, I find there is no good cause listed for consideration in extension of time for filing an application for certificate on point of law. For that reason, I dismiss the entire application and parties are advised to abide the decision in Misc. Land Appeal No. 71 of 2021.

Right of appeal explained.



*NK*  
**M. L. KOMBA**

**Judge**

**08 March, 2023**