

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT - LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

Misc. LAND APPLICATION No. 10 OF 2023

(Arising from the High Court (Musoma Sub Registry) in Misc. Land Appeal No. 12 of 2022; District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 27 of 2021; originating from Kisorya Ward Tribunal in Land Dispute No. 53 of 2020)

SILVANUS MAFURU APPLICANT

Versus

EMMANUEL TENGULE LUGEZI RESPONDENT

RULING

15.05.2023 & 16.05.2023

Mtulya, J.:

This court on 31st August 2021 had handed-down a judgment in **Misc. Land Appeal No. 12 of 2022** (the appeal) involving the present parties and resolved in favor of **Mr. Emmanuel Tengule Lugenzi** (the respondent). The decision had aggrieved **Mr. Silvanus Mafuru** (the applicant). However, the applicant had remained mute to prefer any appeal to protest the judgment of this court in the appeal.

Five (5) months later, specifically on 31st January 2023, the applicant had preferred the present application seeking for enlargement of time to file an application for certification on

point of law so that he can access the Court of Appeal (the Court) to dispute the judgment of this court in the appeal.

In his affidavit, the applicant had produced three (3) reasons of the delay, namely: first, old age; second, financial incapability; and finally, ignorance of the law. The application was scheduled yesterday morning for hearing, and the applicant had invited the legal services of **Mr. Goodwilly Mweya**, learned counsel, to argue in favor of the application.

In his submission, Mr. Mweya stated that the applicant is old aged person with more than seventy (70) years and solely depends on his son for financial support in prosecuting cases and it was unfortunate that his son was sick for a long period of time. According to Mweya, the applicant is a lay person who does not know legal procedures and has a arguable case in an appeal. Finally, Mr. Mweya submitted that the applicant is not negligent and has been keen in following his application.

Replying the submission, the respondent contended that the applicant is telling lies and does not respect court decisions and orders. According to him, when the judgment in the appeal was issued, Hon. Judge had informed them on the right to appeal within time, but the applicant had declined for five (5) months.

Finally, the respondent submitted that the applicant is negligent and abusing court process by filing applications out of time.

The law regulating enlargement of time to file appeals or application out of time requires applicants to produce relevant materials to persuade courts in exercising their discretionary powers to decide in their favor. There is a large bundle of precedents from our superior court on the subject (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

It is unfortunate that our courts of record have been reluctant to display pigeon holes of the relevant materials. The Court in the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, had observed that:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking*

*extension of time to provide the **relevant material** in order to move the court to exercise its discretion.*

(Emphasis supplied).

Regarding the factors that may be considered in the applications, the Court, in the precedent of **NBC Limited & Another v. Bruno Vitus Swalo** (supra), thought at page 7 of its typed Ruling, that:

*It is now settled that **in its discretionary powers, apart from a point of illegality where raised**, the court has to also consider such factors as the length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent. In applying those principles [the court must bear in mind]...the general principle that **every case is decided upon its peculiar facts.***

(Emphasis supplied).

In the present application, the applicant has registered three (3) reasons, which have already been considered in this court. Three (3) years ago, specifically on 8th May 2020, the issue of financial constraint was brought in an application for enlargement of time to file an amended application out of time in this court (see: **Anthony Choling v. Bolore Africa Logistics (T)**

Limited, Misc. Application No. 357 of 2020). In the indicated precedent, this court, at page 6 of the typed Ruling, had resolved that the issue of financial problems cannot be a reason of delay. The reasons of holding so, are provided in two (2) decisions of this court in **Pendo Kawawa v. Okech Odiyo**, Misc. Land Application No. 70 of 2020 and **Bayim Kalyasa & Four Others v. Athumani Nyumbaniki & Two Others**, Misc. Land Application No, 56 of 2022.

This court in the precedent of **Bayim Kalyasa & Four Others v. Athumani Nyumbaniki & Two Others** (supra) had believed, at page 7 of the Ruling, that: *the reason of financial constraints is left with no explanation and justification as to what and for how long they were financially unstable*. On the other hand, the precedent in **Pendo Kawawa v. Okech Odiyo** (supra) had a long text, at page 5 of the Ruling, showing that:

...if courts were to hold that financial difficulties constitute good cause to explain delays for purposes of extension of time, then courts would have opened doors that they would not have muscles to shut again, without the risk of self-defeating. They would have opened doors for guests they have no ability to entertain.

This has been the thinking of courts in East Africa and has been cherished by the East African Court of Appeal (see: **Zabitsi Kawuku v. Abdul Karim** (1938) EACA 37. The position is now certain and settled and has already been confirmed by our superior court (see: **Yusufu Same & Another v. Hadija Yusuph**, Civil Appeal No. 1 of 2002 and **Constantine Victor John v. Muhimbili National Hospital**, Civil Application No. 214/18 of 2020). This court has been following the move (see: **Elizabeth Seth Kimbian v. Scola Samweli Mamboleo**, Misc. Civil Application No. 20 of 2022 and **Wembele Mtimwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016).

I am aware that this court may consider some exceptional circumstances in granting enlargement of time to prefer appeals or applications out of time such as where an applicant is a poor widow depending on legal aid (see: **Yusufu Same & Another v. Hadija Yusuph** (supra) or a physically incapacitated applicant who was crushed by vehicle accident and seeking his rights from the accident (see: **Hamisi Mponda v. Niko Insurance Tanzania Limited & Two Others**, Civil Application No. 254/1 of 2021).


However, the present applicant cannot qualify and considered in the exceptions. In any case, there are no materials on the record which shows that the applicant is poor and had

preferred legal aid or incapacitated from any accident. Similarly, this court in the precedent of **Malima Bitu v, Musa Malima**, Misc. Land Application No. 4 of 2021, citing the approval of the East African Court of Appeal in **Zabitsi Kawuku v. Abdul Karim** (supra), had resolved that: *ignorance of law, old age and lack of means are not good grounds for allowing an appeal out of time.* Having noted existence of precedents on the indicated reasons in this application, it can be said that the applicant has failed to adduce good reasons to persuade this court to decide in his favor.

I am aware that Mr. Mweya had alleged that the applicant had preferred notice of intention to appeal within fourteen (14) days after the decision of this court in the appeal in order to show vigilance in following up his dispute. However, the record is silent on the notice. This court cannot rely on mere words of learned counsels representing parties in this court. In the end, I hold that the present application lacks merit and accordingly dismissed for want of good cause.

It is so ordered.




F. H. Mtulya
Judge
16.05.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of **Mr. Goodwilly Mweya**, learned counsel of the applicant and in the presence of the respondent, **Mr. Emmanuel Tengule Lugenzi**.



F. H. Mtulya

Judge

16.05.2023