

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 8 OF 2022

(Arising from the decision in Land Appeal No 32 of 2021 Resident Magistrate's Court
of Babati (Ext. Jurisdiction))

BASILISA MATAY (administratrix of the estate of the late

DANIEL SIASI DAGHARO)APPLICANT

VERSUS

MIKAEL DAWI (administrator of the estate of the late

DAWI WAU DAGHARO)RESPONDENT

RULING

Date: 16/3/2023 & 24/4/2023

BARTHY, J.

The applicant preferred the present application under Section 11
(1) of the Appellate Jurisdiction Act, [CAP 141 R.E 2019], (hereinafter
referred as the Act), seeking for the following reliefs namely;

- 1. That this honourable court be pleased to grant
extension of time for the applicant to file an
application for leave to appeal to the Court of Appeal*

of Tanzania.

2. Costs of this application abide the outcome.

*3. Any other order/reliefs this court may deem it fit just
and equitable to grant.*

The application is being supported by an affidavit of Richard Patrice Mosha.

In this application Messrs. Richard Mosha and John J. Lundu learned advocates represented the applicant and the respondent respectively. By mutual consent of the parties this court ordered the application be disposed of by way of written submissions.

The applicant's submissions in chief as well as the respondent's reply were lodged in time save for the rejoinder submission by the applicant was filed out of time as the same should have been filed on or before 7/4/2023 but it was filed on 11/4/2023 out of the prescribed time without leave of the court. Hence the rejoinder submission by the applicant will be disregarded.

Mr. Mosha in his submission in support of the application he urged the court to grant the prayers sought as there are sufficient reasons for



the court to grant an extension of time for leave to appeal. He added that, the impugned judgment was delivered on 13/10/2021 and the notice of appeal was lodged on 13/11/2021.

He however claimed to have been issued with the copy of the judgment and decree on 21/1/2022 and she discovered that the decree had clerical errors and therefore she wrote a letter requesting for the correction of the decree and the corrected decree was supplied to her on 21/3/2022. She submitted that she is just a house widow with no means of income hence she has been under serious financial constraint.

The applicant maintained that there are a lot of irregularities apparent on the face of record as the evidence adduced by the applicant was considered in the decision of the trial court.

To fortify this point he cited the case of **Principal Secretary Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 182 where the court held that, where there is illegality on the decision sought to be challenged, the court should grant an extension of time to file leave to appeal. See also the case of **VIP Engineering and Marketing Ltd & 3 others v Citibank Tanzania Ltd**, Consolidated Civil reference No. 6, 7 and 8 of 2006 Court of Appeal



of Tanzania (unreported).

Mr. Mosha further submitted that, the time spent in preparing to filing the document has to be considered it constituted valid reason for the delay as decided in the case of **Vodacom (T) PLC v Commissioner General TRA**, Civil Appeal No. 101/20 of 2021 (unreported).

On reply submission Mr. Lundu contended that there is no sufficient reason advanced by the applicant for the court to exercise its discretion for the extension of time. He further added the applicant lodged notice of intention to appeal out of time.

Expounding on this point Mr. Lundu countered that, the impugned judgment was delivered on 13/10/2021 but the notice of intention to appeal was lodged on 15/11/2021 which was said to be contrary to Rule 83(2) of the Tanzania Court of Rules of 2019 (the Rules) which requires notice of appeal be filed within 30 days.

He further maintained that, since there is an appeal pending before the Court of Appeal, therefore the instant application is of no significance.



On further submission Mr. Lundu pointed out that there was no proof the applicant wrote a letter requesting to be supplied with copies of proceedings, judgment and decree for the purposes of appeal. Apart from the assertion from the applicant that she obtained the decree and judgment on 21/1/2022 only to find clerical errors in the decree and took an action for rectification.

He added that, the copies of judgment and decree are not necessary in applying for leave to appeal to the Court of Appeal as required under Rule 45 (a) of the Rules. On the issue of financial constraints, there was no proof of the same. Thus, no sufficient reasons were advanced for consideration of granting the extension of time.

It was also stated, the alleged irregularities are not deposed in the applicant's affidavit or submissions. Thus, Mr. Lundu sought the application lacks merits and ought to be dismissed with costs.

Having gone through the parties' rival submissions with respect to this application, the sole issue determination is whether the applicant has advanced sufficient reason for the court to exercise its discretion for extension of time.



It is now an established principle that in an application for extension of time, the applicant is required to show good and sufficient cause. What constitutes good and sufficient cause depends with the circumstance of each case.

In the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 Court of Appeal of Tanzania at Arusha (unreported), it sets out factors to be taken into account in determining whether the applicant has advanced good and sufficient cause. These are;

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

It is not in dispute that the impugned judgment was delivered on



13/10/2021, the applicant ought to have preferred an application for leave to appeal within 30 days from the date of the decision, therefore such application should have been filed on or before 12/11/2021.

This application was filed on 21/12/2022, more than a year later. The reasons advanced by the applicant in her affidavit are that, after she was issued with the judgment and decree on 21/1/2022, she found them to have some clerical mistakes and therefore she requested for correction of the said mistakes on 4/2/2022. Therefore, the correct decree was then issued to the applicant on 21/3/2022.

However, the affidavit in support of the application is silent as to what transpired from 13/10/2021 when the judgment was delivered, to 21/1/2022 when the judgment was supplied to the applicant. Rightly as pointed out by Mr. Lundu that, there is no proof if the applicant had applied for the copies of judgment and decree.

I have seriously taken into account the reasons advanced by the applicant. At first, rightly as submitted by the counsel for the respondent that, the copies of judgment and decree were not the necessary documents when seeking for leave to appeal to the Court of Appeal, if the application has been preferred before the High Court.



This position is fortified in the case of **Alex Maganga v. Director Msimbazi Centre** [2004] TLR 212, where among other things it was held that;

"Where an application for leave is made formally under rule 43(a) it is not necessary to attach copy of judgment, decree or order of the High Court against which it is intended to appeal;

In the instant matter, since there is no proof that the applicant took any initiative to request for the copy of judgment and decree, but even after the same it was delivered; the applicant showed high degree of sloppiness on the applicant.

I have taken into account the reason that the applicant had to apply for correction of the decree which had some clerical errors. However, the corrected decree was supplied to the applicant on 21/3/2022 and the instant application was lodged in this court on 20/12/2022.

Hence, the period of **270 days** (nine months) had lapsed from the time the applicant was supplied with the corrected decree to the date she filed the instant application.



The applicant was duty bound to account on each day lapsed. Bearing in mind that, it is now a settled law that the for the application of extension of time, the applicant is required to account for each of the delay. The applicant's affidavit is silent as to what transpired from the date she was supplied with the corrected decree, to the date she lodged the instant application.

The need to account on each day of the delay was underscored it the decision of **Bushfire Hassan v. Latina Lucia Masaya**, Civil application No. 3 of 2007 (unreported) which was quoted with approval in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis** Civil Application No. 138 of 2016 Court of Appeal of Tanzania at Dar es Salaam (unreported) in which it was 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. "

Also, in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra), the court further held that, the delay should not be inordinate. In the instant matter, the delay of 270 days is



an inordinate and worse still it has not been accounted.

In the applicant's affidavit, she pointed out there were points of law worthy of determination by the Court of Appeal. As rightly submitted by Mr. Lundu that it was not stated clearly and specifically stated what are those points of law for determination which would have convinced this court to grant an extension of time to file leave to appeal.

Consequently, I hold that the application lacks merits and the same is dismissed with costs.

It is so ordered.

Dated at Babati this 24th April 2023.



G. N. BARTHY,
JUDGE

COURT: Ruling delivered this 24th of April, 2023 in the presence of the applicant and Mr. Richard Mosha her advocate in the absence of the Respondent.

B.A.MPEPO
DEPUTE REGISTRAR,
24/4/2023.