

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

MISC. LAND CASE APPLICATION NO. 12 OF 2023

JOSEPH NYAGANGA.....APPLICANT

VERSUS

JOHN MWITA MASONDORE.....RESPONDENT

RULING

09th & 09th May, 2023

Kilekamajenga, J.

In this case, the applicant unsuccessfully appealed to this court through Misc. Land Appeal No. 166 of 2015. The decision in respect of the said appeal was delivered on 15th August 2016. Immediately thereafter, that means on 29th August 2016, the applicant lodged notice to approach the Honourable Court of Appeal of Tanzania for justice. On 02nd February 2017, he was issued by this court with a certificate on point of law to enable his appeal to the Court of Appeal. Thereafter, he kept on nagging for copies of judgment and decree for a smooth appeal to the Court of Appeal. Being ignorant of the legal procedures of the court, eventually the applicant's notice to the Court of Appeal crumbled. On 15th February 2021, the applicant appeared before the Court of Appeal but his appeal was struck out for being time barred. On 13th March 2021, he improperly lodged an application before the Court of Appeal but later withdrew it. On 03rd March 2022, he applied for



extension of time to file notice of appeal before this court but the application was found to be improperly filed hence struck out.

Still unshakable to fight for his rights, the applicant sought assistance of an advocate and filed the instant application. The application was made under **section 11 of the Appellant Jurisdiction Act, Cap. 141 RE 2019** read together with **Rule 47 of the Tanzania Court of Appeal Amended Rules of 2019**. He accompanied the application with an affidavit. In response, the respondent filed a counter affidavit resisting the application. The application was immediately called for hearing; both the applicant and respondent appeared in person and without legal representation. When prompted for the submission, the applicant alluded to the reason of delay as being an ignorance of the court legal procedures. He urged the court to adopt the affidavit accompanying the application and grant the extension of time. The respondent objected the application arguing that, ignorance of the procedures is neither an excuse nor reason for the delay. He prayed for the dismissal of the application with costs. Thereafter, there was no meaningful rejoinder than persistent reminder from the applicant that the disputed land belongs to him.

In this application, this court is called to exercise its discretion of whether or not to grant extension of time to allow the applicant to file notice of appeal to the

Court of Appeal. I am aware, the applicant's prayers in the application fall within the discretion of this court. However, extension of time may be exercised where the applicant advances good reason for the delay. See the case of **Valerie Mcgivern vs Salim Fakhrudin Dalal**, Civil Application No. 11 of 2015; **Yusufu Same & Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002; **Regional Manager, Tanroads Kagera vs Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007.

Based on the applicant's oral submission, the applicant seems to have missed any sufficient cause to warrant the court to exercise its discretion. However, the closer scanning of the applicant's affidavit throws some light on the reason for the delay. In fact, the applicant has been in the High Court corridors for almost eight years. I am hesitant to tag him with the label of parties employing tactical delay to manipulate the respondent's rights. In the light of abundance legal authorities, the applicant's delay amounts to technical delay. See, **Fortunatus Masha v. William Shija and another** [1997] TLR 154; **Salvand K.A. Rwegasira v. China Henan International Group Co, LTD**, Civil Reference No. 18 of 2006 (unreported); **Zahara Kitindi & Another v. Juma Swalehe & 9 Others**, Civil Application No. 4/05 of 2017 (unreported); **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016 (unreported); **Samwel Kobelo**

Muhulo v. Natiiona Housing Corporation, Civil Application No. 302/17 of 2017
(unreported).

I have carefully considered the application; in my opinion, the applicant has advanced sufficient reason to warrant this court to exercise its discretion. As long as the applicant has been prompt enough in pursuing his rights through several court levels, technical legal procedures should not be allowed to foil his rights. I hereby grant extension of time for the applicant to file the notice to appeal to the Court of Appeal of Tanzania. Costs to follow in the course.

DATED at **Mwanza** this 09th day of May, 2023



Ntemi N. Kilekamajenga.
JUDGE
09/05/2023



Court:

Ruling delivered this 09th May 2023 in the presence of the applicant and respondent all present in person.



Ntemi N. Kilekamajenga.
JUDGE
09/05/2023

