

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

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISC. LAND APPLICATION NO. 41 OF 2022**

*(Arising from decision of the High Court of Tanzania in Tabora, Land Appeal No. 05 of 2022, from the District Land and Housing Tribunal for Tabora, Land Appeal No. 39 of 2021, originating from Land Application No. 03 of 2021, Mwisi Ward Tribunal)*

**NGAYABULA MSENGI..... APPLICANT**

**VERSUS**

**SUZANA MGAIWA MIZIMU..... RESPONDENT**

**RULING**

*Date of last order: 30.03.2023*

*Date of Ruling: 05.05.2023*

**KADILU, J.**

This is an application for leave to file notice of appeal out of time against the decision of the High Court of Tanzania at Tabora in Land Appeal No. 05 of 2022. The application is made under s. 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and it is supported by an affidavit of the applicant consisting of the following grounds:

- 1. That, the applicant was the appellant in Land Appeal No. 05 of 2022 which was decided in favour of the respondent. The applicant was aggrieved by that decision and intends to appeal to the Court of Appeal.*

2. *That, before the applicant could file notice of appeal, he was bereaved by his uncle on 12/10/2022 and he had to travel from Tabora to Moshi, Kilimanjaro for funeral and came back on 23/10/2022.*
3. *That, the money which he intended to pay the Advocate for preparation of his notice of appeal was spent in travelling to and from Moshi, Kilimanjaro. Therefore, he had to look for another fee for Advocate.*
4. *That, the applicant was late to get Advocate's fee hence, he filed this application for leave to file notice of appeal out of time.*
5. *That, the intended to appeal aims at challenging the following:*
  - i. *Whether it was proper for the High Court not to consider the doctrine of adverse possession;*
  - ii. *Whether it was proper to determine the case without appointment of the administrator of deceased person's estate.*
6. *That, in the interest of justice, this honourable court has to extend time for him to file notice of appeal out of time.*

During the hearing of this application, the applicant appeared in person, unrepresented while the respondent enjoyed legal services of Ms. Stella Thomas Nyakyi, the learned Advocate. When the applicant was called to submit his grounds of application, he basically restated the contents of his affidavit and prayers as contained in chamber summons. Ms. Stella Thomas Nyakyi sworn a counter affidavit on behalf of her client opposing the application. In her counter affidavit and oral submissions, the learned

Advocate contended that the applicant has not shown good and sufficient reasons for the court to grant this application.

She stated that the applicant failed to account for each day of delay that he was late to file notice of appeal. According to Stella, the applicant never wrote a letter requesting to be supplied with certified copies of judgment and proceedings and he did not prove his assertion that he travelled to Moshi in the alleged dates. Finally, the learned Advocate for the respondent argued that financial difficult has never been a ground for extension of time in our jurisdiction as there are countless legal aid providers for indigent persons. She urged the court to dismiss this application with costs for lack of merits.

Upon a careful perusal of the affidavits and submissions made by the parties, the question which I am now required to determine is whether the present application has merit. As per the records, the judgment which is intended to be challenged was pronounced on 07/10/2022 and the instant application was filed on 28/11/2022, more than fifty (50) days after the date of the decision. Under Rule 83 (2) of the Court of Appeal Rules, the applicant was supposed to lodge notice of appeal within thirty (30) days from the date of the decision against which he desired to appeal.

I am mindful that the court has discretion to grant extension of time in these kinds of applications, but I am also aware that such discretion has to be exercised judiciously. This is to say, the discretion should be exercised in accordance with the rules of reason and justice and not arbitrarily. The



case of *Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 (unreported), is a landmark case in Tanzania as far as applications for extension of time are concerned. In that case, the Court of Appeal laid down the factors to be considered by any court in determining applications for extension of time.

The factors are that **firstly**, the applicant should account for all the days of delay. **Secondly**, the delay should not be inordinate. **Thirdly**, the applicant should have shown diligence and not apathy, negligence or sloppiness in the action that he intends to take. **Fourthly**, if the court feels that there are other reasons such as existence of the point of law or illegality in the decision being challenged, it may grant the extension of time. In the present application, the delay was for about fifty-two (52) days. There is no dispute that this delay is inordinate. Given the circumstances, the applicant was expected to give concrete reasons and proof in establishing a good cause for the delay.

In doing so, the law requires him to account for each day of delay. I would hasten to state that the applicant herein has failed to do so. In the first place, the applicant asserts that his uncle passed away at the time he was supposed to file notice of appeal. However, there is nothing concrete to prove the applicant's assertion. When he was asked by the court as to which district in Moshi was the funeral conducted, he could not mention any. As correctly observed by Advocate for the respondent, the applicant did not

show proof of the alleged travel. He did not as well tell the court if he had made any efforts to obtain the certified copies of proceedings and judgment in furtherance of his appeal.

In addition, the applicant did not state the date in which he obtained the certified copies of judgment and proceedings, if at all he got them. Under the provisions of Section 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019], the days spent in obtaining certified copies of judgment and decree are not considered in computing the limitation period. Therefore, indication of the dates in which those documents were obtained could assist the court in ascertaining the extent of delay. In totality, the applicant has not shown a good cause for the delay as required by the law. As well, there are no other reasons such as existence of the point of law or illegality in the decision being challenged which could necessitate the grant of this application by the court.

For these reasons, I find that this application lacks merits and I dismiss it accordingly. Each party shall bear its own costs.

**Order accordingly.**



**KADILU, M. J.**

**JUDGE**

**05/05/2023**

Ruling delivered on the 5<sup>th</sup> Day of May, 2023 in the presence of Mr. Ngayabula Msengi, the applicant and Ms. Stella Nyakyi, Advocate for the respondent.



  
**KADILU, M. J.**

**JUDGE**

**05/05/2023**