

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND APPLICATION NO. 117 OF 2022

*(Arising from Application No. 143 of 2010 District Land and Housing Tribunal for Bukoba, Land Case
Appeal No. 19 of 2014 High Court of Tanzania at Bukoba and Civil Appeal No. 379 of 2021
Court of Appeal of Tanzania)*

ALLI CHAMANI.....APPLICANT

VERSUS

JUDI OWIBINGIRE.....RESPONDENT

RULING

23rd and 25th August, 2023

BANZI, J.:

This is a ruling in respect of an application for extension of time to file notice of appeal and leave to appeal to the Court of Appeal of Tanzania. The application is brought under the provisions of section 11 (1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] ("the AJA") and it is supported by an affidavit of the Applicant.

Briefly, the factual background leading to the matter at hand runs as follows. Sometimes in 2010, the applicant unsuccessfully sued the respondent before the District Land and Housing Tribunal for Bukoba via Application No. 143 of 2010 over a piece of land measuring 20 x 20 metres situated at Kayanga township within Karagwe District. Aggrieved with such

decision, the applicant appealed to this Court via Land Case Appeal No. 19 of 2014 but the same was dismissed for want of merit in 2016. Following such dismissal, he lodged the notice and after obtaining leave of this Court, he eventually filed the appeal to the Court of Appeal. On 30th November, 2022, he withdrew his appeal on technical ground. In his quest to pursue his right, on 15th December, 2022, the applicant filed the application at hand, seeking extension of time so that he can the fresh file notice of appeal and leave to appeal to the Court of Appeal.

When the application was called for hearing, the applicant who is also an advocate appeared in person while, Mr. Frank John, learned counsel appeared for the respondent. The respondent through his learned counsel did not oppose the application. On his side, the applicant adopted his affidavit to form part of his submission and submitted that, the reason for the delay is technical ground because after his appeal being withdrawn before the Court of Appeal, all documents prior filed died automatically. He added that, the only way to pursue his appeal is to start afresh by seeking extension of time to file notice of appeal and leave as it was stated in the case of **William Shija v. Fortunatus Masha** [1997] TLR 213. In that regard, he prayed for the application to be granted without costs.

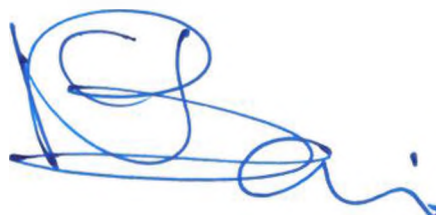
I have carefully considered the affidavit and submission of the applicant. According to section 11 (1) of the AJA, this Court is vested with discretion to extend time for giving notice of intention to appeal and for making an application for leave to appeal. Normally, application for extension of time is granted when the applicant successfully establishes sufficient cause. However, what amount to sufficient cause has not been defined but there are various factors to be taken into account which were underlined by case laws including the length of delay, the reasons for the delay, the degree of prejudice that the respondent may suffer if the application is granted, whether or not the application has been brought promptly, lack of diligence on the part of the applicant just to mention a few.

Moreover, there is another factor that is called technical delay *i.e.*, the time lost by party when he was pursuing matters in court. This factor was also developed by case law through the case **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 that was determined by a single Justice of the Court of Appeal and later approved with authority by the Court in the case of **Salvand K.A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006 (unreported). See also the cases of **Bank M (Tanzania) Limited v. Enock Mwakyusa** [2018] TZCA 291 TanzLII, **Victor Rweyemamu Binamungu v. Geoffrey**

Kabaka and Another [2020] TZCA TanzLII and **Emmanuel Makamba v. Bodi ya Wadhamini Jimbo Kuu la Mwanza** [2022] TZCA 809 TanzLII.

Reverting to the matter at hand, looking closely at the affidavit of the applicant, it is apparent that the applicant's main explanation for the delay is that, he lost the time when he was pursuing his right in court from the moment his appeal before the High Court was dismissed to the time, he withdrew his appeal before the Court of Appeal. As stated in the case of **William Shija v. Fortunatus Masha** (*supra*), when the appeal was withdrawn, the notice of appeal and leave were also withdrawn and the applicant can only return to the Court of Appeal after filing the fresh notice of appeal as well as leave which are obtained after seeking extension of time.

Since it is apparent that, the reason for the delay is on technical ground, I find merit on the application and hence I grant it. Consequently, the applicant is given thirty (30) days from the date of this ruling to file notice of appeal and application for leave to appeal to the Court of Appeal. Each party shall bear its own costs. It is accordingly ordered.



I. K. BANZI
JUDGE
25/08/2023

Delivered this 25th day of August, 2023 in the absence of the applicant with notice and in the presence of Mr. Rogate Assey, learned advocate who is holding brief of Mr. Frank John, learned advocate for the respondent.



A handwritten signature in blue ink, appearing to read "I. K. Banzi". The signature is stylized with large, flowing loops and a long horizontal stroke at the end.

I. K. BANZI
JUDGE
25/08/2023