

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPLICATION NO.45 OF 2023

*(Originating from the Decision of the District Land and Housing Tribunal of Tarime District at Musoma in
Land Appeal No. 48 of 2016)*

MTERESA MAGORI.....APPLICANT

VERSUS

ABDU MBUNE KIBIBI.....RESPONDENT

RULING

5th July & 25th August, 2023

ITEMBA, J.

The applicant herein was aggrieved by the decision of this court in Misc. Land Case Appeal No. 156 of 2016 and had filed an application for extension of time to file notice of appeal so as to appeal to the Court of Appeal.

The application is filed under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019] and section 95 of the Civil Procedure Code Cap 33 RE: 2019 and supported by the applicant's affidavit in which grounds for the request are stated. In the other side, the 2nd respondent filed affidavit opposing the application.

At the hearing, the applicant was represented by Mr. Amos Wilson learned advocate. The respondent on whom service was effected, did not appear before the court.

Mr. Wilson, the applicant's counsel, submitted that the applicant is applying for leave to file an appeal out of time before the Court of Appeal against the High Court decision which was issued on 30th August 2016. He stated that the basic reason for the delay is that on 6th of September 2017 the applicant filed notice of appeal at Mwanza sub-registry but the notice was found invalid because the certificate of delay issued by Deputy Registrar Mwanza did not comply with the law. He referred the court to the Court of Appeal's order dated 18.2.2022 which is not marked. He went on that the applicant filed Civil Application No. 232/08 of 2022 praying for extension of time to file notice of appeal and the application was found incompetent and it was struck out for being in the wrong court. That, following that Court of Appeal order, the applicant filed this application.

In trying to account for each day of delay, the applicant's counsel stated that, since 8th September 2017, the applicant was suffering from diabetes and on 15th October 2017 he went to referral hospital in Mara and

he was referred to Bugando Hospital. That he could not file the medical report by mistake. That, between 8th September 2017 and 18th November 2018 the applicant was seriously sick and on 21st November 2018 the applicant wrote a letter to Deputy Registrar applying for proceedings to prepare records of appeal. That is when he was given a certificate of delay which excluded the duration between 21st November 2019 and 23rd March 2019.

That at the time of hearing Civil Appeal No. 191/2019 and Civil Application No. 232/08/2022 the applicant had good faith and he believed he was conducting the application on a proper forum.

He finalized by stating that from 24th of April 2023 up to the date of filing this application on 16th of May 2023 the applicant was looking for the legal counsel to prepare this application.

After considering the applicant's arguments, the issue is whether the applicant has shown a good cause for the extension of time to be granted.

Section 11(1) of The Appellate Jurisdiction Act provides that: *"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the*

time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

There are no laid down variables or a clear definition of the phrase "good cause" when the court is exercising its discretion to grant an extension of time, however, there are factors which the court considers when determining this, as introduced by various decisions. These factors though not exhaustive are such as; the length of the delay; the reasons for the delay; the degree of prejudice the respondent stands to suffer if time is extended; whether the applicant was diligent; and whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged. See the cases of **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987, **Tanga Cement Company Limited vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 and **Lyamuya Construction Company Limited vs Board of Registered Trustees of Young Women's**

Christian Association of Tanzania, Civil Application No.2 of 2010

(All unreported).

In the present application, the supporting affidavit particularly revealed that the reason for the delay is the applicant was prosecuting his case but in a wrong platform. In the respondent's affidavit, he explains that the applicant has not advanced sufficient reasons for delay. That he has not accounted for each day of delay since the delivery of High Court decision in Misc Land Case Appeal no. 156/2016 and the time between Court of Appeal decision on 27th April 2023 to 16th May 2023.

It is trite law that a delay arising from time spent in the corridors of the court to pursue justice in good faith constitutes an excusable delay. (See:- **Omary Ally Nyamalege (as administrator of the Estate of the Late Seleman Ally Nyamalege) and Others vs. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017).

There is no dispute that between 30th August 2017 and 27th April 2023 the applicant initiated his appeal to the Court of Appeal and he was busy prosecuting it in good faith until when it was struck out. This duration have to be excluded from counting the number of days of delay. Between

27th April 2023 and the time of filing the application, there are 19 days, and the applicant was preparing the application through the aid of his attorney. I do not find this duration as an inordinate delay.

Based on the above cited authorities and contention by the applicant's counsel and the counter affidavit, I find that there was a technical delay followed by extra 19 days of preparing this application. It is upon the above reasons that I allow the application. Leave is granted to the applicant to lodge a notice of appeal to the Court of Appeal against the decision of this court in Misc. Land Case no. 156/2016. The appeal shall be lodged within thirty (30) days from delivery of this ruling.

Costs to follow the event.

Right of appeal duly explained.

DATED at **MWANZA** this 25th day of August, 2023.




L.J. ITEMBA
JUDGE
25.08.2023