

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

CIVIL APPLICATION NO. 4 OF 2023

(Originating from High Court Land Appeal No. 29 of 2018)

BUSEYA IBRAHIM KAMONJAAPPLICANT

VERSUS

WEMBO SHABANI MARIJANI RESPONDENT

RULING

Date: 16/08/2023 & 01/09/2023

BAHATI SALEMA, J.:

In this application, the applicant **Buseya Ibrahim Kamonja** is seeking an order from this Court for an extension of time within which he may lodge an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Appeal No. 29 of 2018. Supported by an affidavit sworn by the applicant the application was brought under section 11(1) of **the Appellate Jurisdiction Act**, Cap. 141 [R.E 2019].

The reason for the delay advanced by the applicant in his affidavit is that he fell sick after contacting Coronavirus disease (COVID-19) soon after the pronouncement of the Judgment of this Court

In a counter affidavit duly sworn by the respondent Wembo Shabani Marijani, she vehemently opposed the application by stating that the application is extremely time-barred, the applicant acted negligently and he omitted his right to file an application for leave to appeal to the Court of Appeal. Since almost four years have passed, the applicant has had enough time to file the same not this time.

When the application was called on for hearing the applicant appeared in person unrepresented whereas the respondent enjoyed the service of Davis Majige Vedastus learned counsel. When the applicant was afforded a chance to submit in respect of the application, he had nothing to add but a prayer for his affidavit to be his submission.

In reply, the respondent stated that there is no genuine reason advanced by the applicant for consideration to extension of time and nowhere in his affidavit has he shown sufficient ground for grant of the same, he referred the Court to the case of ***Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil App No. 2 of 2010 CAT at Dar es Salaam.***

In the case of Lyamuya construction cited by the respondent, the Court of Appeal issued a guideline for consideration in applications for extension of time like the one in hand, 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 intend to take.*
- (d) If the court feels that there other sufficient reasons, such as the existence of a point of law sufficient importance; such as the illegality of the decision sought to be challenged*

In the instant application, the record shows that the judgment intended to be appealed against was delivered on 8th May 2019 and this application was filed on 16/02/2023. Almost four years have passed. In support of

his reason for delay, the applicant has attached to this application several medical records to evidence that he fell sick immediately after the delivery of judgment.

The judgment of this Court was delivered on 08/05/2019 but all the medical exhibits attached to this application are from 2020 to 2022, none of the attached records shows that the applicant fell sick between May, 2019 to December, 2019.

Moreover, all the medical documents of the years 2020 to 2022 attached to the application show that the applicant was being treated as Out Patient so there is no viable reason clearly showing that the applicant was hospitalized in either of the hospitals where he received services hindering him to file the application for leave.

Blending these facts to ***Lyamuya's Case (supra)*** the applicant has failed to account for the years of delay and for that reason the application is dismissed for want of merit. No order as to costs.

Order accordingly.



A. BAHATI SALEMA
JUDGE
25/08/2023

Court: Ruling delivered through video link in presence of the applicant and Mr. Davis Majige Vedastus, learned counsel for the respondent.



BAHATI SALEMA
JUDGE
01/09/2023

Right of Appeal fully explained.



Bahati

BAHATI SALEMA

JUDGE

01/09/2023