

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

MISC. LAND APPLICATION NO. 23 OF 2022

*(Arising from the High Court of Tanzania at Mbeya in Land Appeal No. 9 of 2021,
Originating from the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 164 of 2015)*

FERDINAND NAZARENO SANGA.....APPLICANT

VERSUS

ABDALLAH LEKI.....1ST RESPONDENT

MONICA MWALYEGO.....2ND RESPONDENT

RULING

Date of Last Order: 27.07.2023

Date of Judgment: 19.09.2023

NDUNGURU, J.

The applicant has preferred the instant application under section 11 (1) and (2) of the Appellate Jurisdiction Act, Cap. 141 R.E 2019 seeking an extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania out of time. It is supported by an affidavit of the applicant himself.

The applicant intends to challenge this Court's decision made in Land Appeal No. 9 of 2021, the judgment dated 20th October 2021

which dismissed his appeal. The appeal in this Court originated in the District Land and Housing Tribunal for Mbeya in Land Application No. 164 of 2015. In that case the applicant unsuccessfully sued the respondents for house No. 984 located at Ndola village in Mbeya region which he wanted to be auctioned for loan recovery he alleged to have advanced to the deceased, one Safari Abdallah Leki in terms of supplying him with building material on loan basis.

The application was not protested as the 1st respondent was reported to have passed away and that the administrator of his estates was uninterested with prosecuting the matter. On lack of the proof about the said report the service was made through substituted means in Mwananchi Newspaper dated 18th November 2022. Thus, the application was heard *ex-parte* against the 1st respondent whereas the 2nd respondent supported the application.

The hearing of the application was conducted by way of written submissions. The parties were in persons, unrepresented.

Supporting the application, the applicant prayed to adopt his affidavit. He contended that the reasons for grant of his application are premised under paragraph 5 of the supporting affidavit. In that paragraph 5 he claimed that the delay was caused by the internet

problem which led his timely application for leave to be unsuccessfully registered. He claimed further that his effort to rectify the problem proved futile and he found himself late. According to him the unsuccessfully registered application for leave was submitted on 19th November 2021. He referred this court to a copy of screenshot which he said to have been attached to the affidavit. The applicant urged this court to grant the application.

On her part, the 2nd respondent submissions were to support the statement made by the applicant she also prayed that the application be granted.

I have considered the applicant's chamber summons, the supporting affidavit and the submissions. Indeed, the impugned judgment was delivered on 20th October 2021. According to Rule 45 of the Court of Appeal Rules, time limit for the applications of this nature is 30 days from the date of the decision. However, this Court has power to extend the time for making an application of this nature, notwithstanding that the time has already expired, section 11 (1) of the AJA.

The provision i.e section 11 (1) of AJA uses the word "may" which means that extending time is the discretion of the court. Needless to

restate the general principle that extension of time is court's discretion to be judiciously exercised upon sufficient cause being shown. See the case of **Benedict Mumello vs Bank of Tanzania**, Civil Application No. 12 of 2012 CAT (unreported). And what amount to sufficient cause have not been stated by any statute but depends on the circumstance and facts in each case. See **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) and **Tanga Cement Company Limited v. Jumanne D. Massanga and Another**, Civil Application No. 6 of 2001 (unreported), in the latter case it was observed that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have been taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay or lack of diligence on the part of the applicant."

The applicant said that the delay was not deliberate or the inaction of the applicant but was due to what he called technical delay.

According to him the technical problem of the network was the main cause of his delay.

The applicant has stated that he submitted the application for leave together with the notice of appeal to the Court of Appeal on 19th November 2021. However, the present application indicates that it was filed in court on 31st March 2022. Nothing has been said about what happened from 19/11/2021 when the network problem alleged to have been occurred to 31/3/2022 which is the filing date. It took about four months from when the alleged problem occurred to the date the present application was lodged in Court.

The applicant has further contended that he screenshot the said network problem, but the same had never exhibited. In his affidavit he claimed to have attached it nonetheless, the said copy is not attached as it is nowhere to be seen. I am of the considered view that the applicant stated in his affidavit the fact which did not exist. Though he emphatically contended that the network problem was the main cause for his delay.

Conversely, I may agree with the applicant that network problem may constitute the reasons for grant of extension of time or the court in computing time limit in electronic filing may exclude the time in which

the network problem occurred. However, the relief may apply if the applicant had followed the procedure provided by the law i.e the Judicature and Application of Laws (Electronic Filing) Rules Regulation GN. No.148 of 2018 (the Electronic Filing Rule). The law provides that in computing time limit in electronic filing the Electronic Filing Rules provides for exclusion of the time in which network problem occurred upon informally and *ex-parte* moving the Deputy Registrar. The provision i.e Rule 24 of the Electronic Filing Rules reads:

"24 (1)-The period during which electronic filing system is not in operation, for any reason, shall be excluded from the computation of time for filing.

24(5) Where party misses a filing deadline due to technical problems referred to in sub-rule (1) the party shall move informally and ex parte the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief."


In this matter, the applicant did not state what appropriate stapes he took after the alleged network problem apart from mere words that he faced with the internet problem in the Judiciary Statistical Dashboard System (JSDS) and the alleged annexure of screenshot which in fact did

not exist. The applicant was also emphatic that the delay caused by technical problem on filling application online despite several efforts is a good cause depending on the circumstance. He referred me to this Court decision in **KBC Bank Tanzania Limited vs Sara Joel Mahanyu**, Misc. Land Case Application No.30 of 2021 at Arusha. The case however, is distinguished from the present circumstances. This is because, in that case it was proved by the applicant that he filed the appeal on time but mistakenly filed it in another registry which it was found that the mistake was committed by the counsel for the applicant in which denial of extension of time for the wrong committed by a counsel would have been as good as punishing the applicant for the wrong he did not commit. Unlike in the present application where the applicant stood on mere words that his timely filed application for leave was encountered with network problem as the result was unsuccessfully admitted by the Registrar.

That being said and done, I find the applicant's application lacking merits. Consequently, I dismiss it without costs.

It is so ordered.




D.B. NDUNGURU
JUDGE
19/09/2023