

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

MISC. CIVIL APPLICATION NO.120 OF 2023

[From Execution No. 12 of 2022, Original Civ. Appeal No.64 of 2014]

DIDACE NGASSA MUSOKA-----APPLICANT
VERSUS
MWANZA CITY COUNCIL-----RESPONDENT

RULING

Sept. 20th & 29th, 2023

Morris, J

By the present application, Didace Ngassa Musoka, is moving this Court to extend time for him to file a notice of appeal to the Court of Appeal. He has his affidavit in support of the application. Briefly accounted, facts of this matter are that: the applicant unsuccessfully sued the respondent before the District Land and Housing Tribunal for Mwanza (DLHT). It was application no. 167 of 2010. Vide it, he was claiming against the latter ownership of land located at Igoma, Nyamagana District (elsewhere, "the suitland"). He lost.

However, his appeal no. 64 of 2014 before this Court was successful. He was declared the lawful owner of the suitland and awarded Tshs.



1,500,000/= compensation. Consequently, he filed execution application no. 12 of 2022 to evict the respondent-judgement debtor from the suitland. The subject application was objected by the respondent who alleged that the decree had already been fully satisfied following payment of Tshs. 2,235,000/= to the applicant-decree holder. The applicant admitted having been paid the said sum. However, he claimed further that such amount was paid as compensation for improvement over the land only. The Deputy Registrar (DR) on 25/4/2023 delivered the ruling dismissing the application. In doing so, the DR reasoned that the applicant was only declared owner of the suitland to justify compensation not to both regain/retain the suitland and being compensated thereon.

The applicant was discontented. He, thus, challenged the decision of DR through reference before this court vide HC civil application no. 61 of 2023. On 28/7/2023, it was however struck out on the basis that DR's decision is the decision of this Court. Hence, it should be challenged through appeal, reference or revision before the Court of Appeal. Accordingly, the applicant is still resolute to try his luck at the next level of appeal. He is,



however, still having a time-bar hurdle to cross before filing the requisite notice appeal ready to access the Court of Appeal. Hence, this application.

During hearing, the applicant was unrepresented. The respondent was, nonetheless, represented by Joseph Vungwa, learned State Attorney. It was the applicant's submissions that he was, all along, prosecuting the previous reference before this Court against the decision of DR. Therefore, he alludes his delay to being a technical one.

In reply, it was submitted that the application is without merit. The respondent also argued that this Court lacks jurisdiction because the law used by the applicant is not applicable. To the State Attorney, the law cited herein permits appeal to the Court of Appeal from decisions of this Court. In addition, it was submitted that the decision by Hon. Robert, J in application No. 61/2023 had the effect pronouncing DR's decision as the deemed decision of the High Court.

The respondent also cited section 3 of ***the Appellate Jurisdiction Act***, Cap 141 R.E, 2019 (***AJA***) which defines the High Court. In his take, the High refers to the matter being presided over by a judge. Further, he argued that rule 3 of ***the Court of Appeal Rules***, R.E. 2019 describes the High



Court as to include the resident magistrate with extended jurisdiction. His conviction hereof is, therefore, that DR's decision is not the decision of the High Court. Consequently, the respondent contested that the reason given by applicant (technical delay) is not tenable for he was pursuing an improper course. To the said attorney, the applicant should apply for review before this Court or for revision in Court of Appeal. In rejoinder the applicant maintained that this court has jurisdiction.

From the affidavit and submission by the parties, the I will determine the application by answering one major question: whether or not ground advanced by the applicant (technical delay) suffice in making this court to allow the application.

It is a cardinal law that the powers to extend the time is discretional. This discretion is, however, exercisable judiciously in accordance with the rules of reason and justice; not being based on private opinion, arbitrariness, vagueness or fancifulness; but rather according to the law and principles. See the cases of **Damas Essesy and another v Raymond Mgonda Paula and 8 others**, Civil Application No. 32/17 of 2018; **Bakari Abdallah Masudi v Republic**, Criminal Application No. 123/07 of 2018; and **Bank of**

Tanzania v Lucas Masiga, Civil Appeal No. 323/02 of 2017 (all unreported).

According to the applicant he was bonafide prosecuting reference proceedings before Hon. Robert J. believing that this court has jurisdiction. Therefore, his delay was technical one. Mr. Vungwa is of the view that the decision of the DR is only 'deemed' to be the decision of this court therefore the applicant cannot appeal against the decision of the DR to court of appeal. Therefore, to him, this Court has no jurisdiction to extend time hereof. Hence, the applicant's ground of technical delay is a misplacement.

I now pose here to determine contention by Mr Vungwa that this Court lacks jurisdiction. The substantiation given by him is that the judgement of DR is only "deemed" to be the judgement of this Court. I, with adequate respect, disassociate myself with the State Attorney's argument. Indeed, the decision of the DR is a decision of this Court. Reference is made to the case of ***Iron and steel Limited v Martin Kumaliya and 117 others***, Labour Revision No 169 of 2022; ***Songea Satom Company v Barclays Bank Tanzania and Another***, Misc. Civil Reference No. 15 of 2021; and ***Philipo Joseph Lukonde v Faraji Ally Said***, Land Reference No. 01 of 2022; and

Nizar Abdallah Hirji v Rehema Salumu Abdallah, Misc. Civil Application No. 34 of 2020 (all unreported). Therefore, with adequate respect, this application is competent and right before this Court.

I will now determine *whether or not the application is to be merited*. I am alive to the principle of law that technical delay forms a sufficient reason for extension of time. That is, the fact that the applicant was prosecuting other proceedings in court may be taken into account as stated in ***Mathew T. Kitambala v Rabson Grayson and Another***, Criminal Appeal No. 330 of 2018; ***Bharya Engineering & Contracting Co. Ltd v Hamoud Ahmed Nasor***, Civil Application No. 342/01 of 2017; and ***Salvand K. A. Rwegasira v China Henan International Group Co. Ltd***, Civil Reference No. 18 of 2006 (all unreported).

However, the ground for technical delay is not to be considered in total isolation of other fundamentals. In principle, the application for extension of time is allowed subject of other tests. Such factors include the accounting for everyday of delay. It is cardinal principle of law that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007

(unreported), the Court held that delay “of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken”.

In line with the foregoing holding, see also, ***Yazidi Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & Another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa (legal personal representative of Joshua Rwamafa)***, Civil Application No. 4 of 2014; ***Dar es Salaam City Council vs. Group Security Co. Ltd***, Civil Application No. 234 of 2015; and ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, (all unreported).

In the matter at hand, it is undisputed that the applicant was prosecuting the application for reference until 28/7/2023 when it was struck out. Applying the *technical delay principle* hereof, I exempt him of days of delay up to such date. Nevertheless, the present application was filed on 15/8/2023. That is, 17 days after the other application was struck out. I have taken liberty to traverse the applicant’s affidavit. Therein, I find no deposition as to how 17 days were exhausted. It is, thus, evident that the applicant has failed to account for the subject 17 days.



For the stated reasons, this Court is not sufficiently moved to extend time as prayed by the applicant. The application, thus, lacks merit. It accordingly stands dismissed. Each party shall shoulder own costs. It is so ordered. The right of appeal is duly explained to parties.



C.K.K. Morris
Judge
September 29th, 2023

Ruling delivered this 29th day of September 2023 in the presence of Mr. Didace Ngassa Musoka, the Applicant.

C.K.K. Morris
Judge
September 29th, 2023