

**IN THE HIGH COURT OF TANZANIA**

**AT MWANZA SUB-REGISTRY**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 91 OF 2023**

*(Arising from the decision of the High Court of Tanzania at Mwanza in Land Appeal No. 78 of 2022  
(Hon. Kamana, J) dated 21<sup>st</sup> July 2023, original land Application No. 15 of 2021 in the District  
Land and Housing Tribunal for Chato)*

**JACOB JOSIA.....1<sup>st</sup> APPLICANT**

**MUSSA NCHEYE.....2<sup>nd</sup> APPLICANT**

**INNOCENT KARUGIRA.....3<sup>rd</sup> APPLICANT**

**VERSUS**

**RUSIA JOSEPH.....RESPONDENT**

**RULING**

*Date of last order: 26<sup>th</sup> October 2023*

*Date of Ruling: 30<sup>th</sup> October 2023*

**MTEMBWA, J.:**

The Applicants are seeking for extension of time within which to file a Notice of Appeal to the Court of Appeal of Tanzania out of time. They are also seeking for extension of time to file leave to appeal to the Court of Appeal of Tanzania out of time against the whole of the Judgement and Decree of Hon. Kamana, J in Land Appeal No. 78 of 2022 dated 21<sup>st</sup> July 2023. The same was brought under section 11(1)

of the **Appellate Jurisdiction Act, Cap 141 RE 2019** and was supported by a joint Affidavit of the Applicants.

During hearing of this Application, the Applicants were represented by Mr. Costantine Ramadhani, the learned advocate while the Respondent appeared in person. Hearing proceeded orally.

From the Affidavit, the Applicants essentially claim that in the year 2021, they happened to file in the District Land and Housing Tribunal for Chato Application No. 15 of 2021 that was decided in their favour. That following that decision, the Respondent appealed to this Honourable Court in Land Appeal No. 78 of 2022 which however ended in her favour. That they failed to lodge a notice of appeal and application for leave to appeal to the Court of Appeal in time because they had no knowledge of the presence of the said appeal and that a notice of the date of Judgement was not served to them.

The facts reveal further that, it was until 25<sup>th</sup> August 2023 when they came to know of the presence of the said appeal having been served with the Notice of execution from the District Land and housing Tribunal for Chato. That the said summons was served to the 3<sup>rd</sup> Applicant and since the 1<sup>st</sup> and the 2<sup>nd</sup> Applicants could not be traced, the summons had to remain with the Village Executive officer for Nyararambe Village until 27<sup>th</sup> August 2023. However, they managed to file this Application promptly on 27<sup>th</sup> August 2023. Another reason advanced was illegality and it was alleged that the

Honorable Court failed to enter Judgment against one Kalori Kamengangiga.

During hearing, Mr. Costantine Ramadhani reiterated what was deponed in the joint affidavit of the Applicants and cited the cases of ***Cosmas Contraction Co Limited v. Arrow Garments LTD (1992) TLR 127*** and ***Musa Mpanduje v. Jacob Mashauri Kitenge, Misc. Land Case No. 82 of 2018, HC at Mwanza (Unreported)***.

On the issue as to whether this was a lawful course to take as alleged by the Respondent in her Counter Affidavit, Mr. Costantine Ramadhani submitted that it is not always that a party should apply to set aside *ex parte* Judgement before resorting to an appeal. He said, Section ***70(2) of the Civil Procedure Code, Cap 33 [RE 2019]*** allows appeal against *ex parte* Judgement. He cited the case of ***Chasa Yahaya Mongela v. Registered Trustees of Raudha Mosque, HC Civil Appeal No. 35 of 2022 (Unreported)***. He added that, the Applicants do not intend to challenge the substance of the *Ex parte* Judgement. He then prayed this court to find that the application has merits.

In reply, the Respondent had little to submit. She submitted that the Applicants were served with summons to appear but they did not without lawful cause. She added further that, even this court happened to serve them with summons and they replied. As such, they were aware of the matter. She lastly implored this Court to

dismiss the application. Mr. Costantine Ramadhani had nothing to rejoin.

I have carefully gone through the affidavits and the submissions by the parties. I have however discovered that while the Applicants maintain that this application is properly filed, the Respondent through her Counter Affidavit maintains that the same has been misplaced as they were supposed to apply to this Court to set aside *ex parte* Judgment first. Being the issue of law, I think it is pertinent that I look into it first.

As submitted by Mr. Costantine Ramadhani, ***section 70(2) of the Civil Procedure Code, Cap 33 [RE 2019]*** allows appeal against *ex parte* Judgement. I think this issue should not detain us long here. In the case of ***Dangote Industries LTD Tanzania v. warnercom (T) Limited, Civil Appeal No. 13 of 2021, CA of Tanzania at Dar es Salaam*** it was said that;

*"Conversely, an ex-parte judgment is appealable under section 70 (2) of the CPC which provides that "an appeal may lie from an original decree passed ex-parte" Section 70 (2) of the CPC, unambiguous as it is, does not impose any condition for appealing against an ex-parte Judgement".*

It follows therefore that the Applicants have right to appeal provided they will not touch the substance of the *ex parte* Judgement. Since I have no grounds of appeal here it is impossible to know what they will be challenging at the Court of Appeal of Tanzania. This issue can not be determined at this stage without having perused the

memorandum of appeal. As such, it suffices here to note that the *exparte* Judgment is appealable.

Having so observed, the next question is whether this application should be granted. Indeed, ***Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [RE 2019]***, provides for powers of the High Court to extend time for giving notice of intention to appeal and or to file Application for leave to appeal from the decision of the High Court. ***Rules 45, (a) 83 (1) and (2) of the Tanzania Court of Appeal Rules of 2009*** as amended provide for time to lodge a notice of appeal and application for leave to appeal to the Court of Appeal of Tanzania which is thirty days from the day of the decision of the High Court.

It is a trite law however that whoever wants this Honourable Court to enlarge time, he is required to show good cause why time should be extended. What is a good cause is a question of fact, and this may vary with the circumstances of each case. In fact, each case must be decided in its own facts.

In the case of ***Mansoor Daya Chemicals Ltd Versus National Bank of Commerce, Civil Application No. 88 of 2016, CAT at Dar es Salaam (unreported)***, Massati, J.A (as he then was) had this to say at page 4 to 5 of the of the ruling;

*"In an Application for extension of time under Rule 10 of the Rules, an Applicant is required to show good cause why time should be extended. What is a good cause is a*

*question of fact, and this may vary with the circumstances of each case. But it is common ground that in such an application the Applicant must show:-*

- i. The length of the delay*
- ii. The reason(s) for the delay that would account for each day of delay.*
- iii. If there is an arguable case”.*

In the present Application, the applicants alleged that they failed to lodge a notice of appeal and application for leave to appeal to the Court of Appeal of Tanzania in time as they had no knowledge of the presence of Land Appeal No. 78 of 2022 and that a notice of the date of Judgement was not served to them. That, it was until 25<sup>th</sup> August 2023 when they were informed of the said appeal having been served with the Notice of execution from the District Land and housing Tribunal for Chato. Having so informed, they filed this Application promptly on 27<sup>th</sup> August 2023. To me, I find that the Applicants have advanced reasons for the delay and have accounted for the days elapsed. It is also on records that the Application was filed promptly. That alone suffices to dispose this Application. I will not deal with the issue of illegality as submitted by Mr. Costantine Ramadhani. Since they have advanced reasons for the delay, I see no reason to refuse to grant this Application.

Through her Counter Affidavit, the Respondent forcefully resisted this Application and alleged further that the Applicants were dully served with summons to appear but they did not without justification. Since this is not an application to set aside exparte

Judgment, I see no reason to determine whether or not they had lawful cause for their absence when ex parte order was entered.

In the upshot, this Application is granted. Time is therefore enlarged for the Applicants to file Notice of Appeal and leave to appeal to the Court of Appeal of Tanzania within fourteen days (14) from today subject to ***rule 46(1) of the Tanzania Court of Appeal Rules of 2009 as amended***. There will be no order as to costs.

I order accordingly.

**DATED** at **MWANZA** this 30<sup>th</sup> October 2023.



**H.S. MTEMBWA**  
**JUDGE**

