

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

**MISCELLANEOUS LAND APPLICATION NO. 88 OF 2023**

*(Arising from the Ruling of the High Court of Tanzania at Mwanza (Hon. K.N. Robert, J) in HC  
Misc. Land Application No. 8 of 2022 dated 19<sup>th</sup> day of May 2023)*

**KIRANDORA MUHERE.....APPLICANT**

**VERSUS**

**AMOSI BHOKE.....RESPONDENT**

**RULING**

*Date of last order: 25<sup>th</sup> October 2023*

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

**MTEMBWA, J.:**

The Applicant filed a Chamber Summons under ***section 11(1) of the Appellate Jurisdiction Act, Cap 141, [RE 2019]*** and ***section 95 of the Civil Procedure Code Cap 33 [RE 2019]*** seeking for an order of extension of time to file a Notice of Appeal to the Court of Appeal of Tanzania out of time. The same was supported by an Affidavit of the Applicant, Mr. Kirandora Muhere.

During hearing of this Application, the Applicant was represented by Mr. Innocent Kisigiro, the learned counsel while the Respondent enjoyed the service of Mr. Emmanuel John, the learned counsel. Hearing proceeded orally.

From the facts revealed in the Affidavit and attached documents, the Applicant happened to be a Respondent in Land Appeal No. 14 of 2017 in this Honourable Court that ended *ex parte* in his disfavour. Consequently, the Applicant filed Miscellaneous Land Application No. 8 of 2022 seeking for an order to re-hear the said Land Appeal which however, on 19<sup>th</sup> May 2023, was refused by Hon. Robert, J. It is revealed further that, on the day of Ruling, both, Mr. Innocent Kisigiro, the learned counsel for the Applicant and Mr. Emmanuel John, the learned counsel for the Respondent were present.

Expounding further on the Application, Mr. Innocent Kisigiro submitted that, initially, the ruling in Miscellaneous Land Application No. 8 of 2022 dated 19<sup>th</sup> May 2023 was pronounced orally. However, when the written one was served to the Applicant on 18<sup>th</sup> July 2023, it was learnt that it was typically different from what was pronounced orally, and in that, the Application was actually dismissed contrary to what he thought before. The Applicant thought that the same was so granted to file the Application to re-hear the said Land Appeal No. 14 of 2017 within fourteen days.

During hearing Mr. Innocent Kisigiro added that, as the result of oral pronouncement of the ruling on 19<sup>th</sup> May 2023 in Miscellaneous Land Application No. 8 of 2023, Miscellaneous Land Application No. 40 of 2023 (Application to re-hear the said Land Appeal No. 14 of 2017) was filed on 24<sup>th</sup> May 2023. However, having discovered the difference between the oral articulation of the ruling and the typed one, on 16<sup>th</sup> August 2023, the same was withdrawn. That, the difference was discovered on 18<sup>th</sup> July 2023 when the said ruling was served to him.

The learned counsel for the applicant highlighted further that, as a result thereof, the Applicant filed the instant Application seeking for an order of extension of time to file a Notice of Appeal to the Court of Appeal of Tanzania out of time. That he came to learn about the order of dismissal after time available for filing a notice of appeal to the Court of Appeal of Tanzania has lapsed.

In the course of accounting for the delay, Mr. Innocent Kisigiro said that the applicant filed this application promptly on 17<sup>th</sup> August 2023 having withdrawn Miscellaneous Land Application No. 40 of 2023 (Application to re-hear the said Land Appeal No. 14 of 2017) on 16<sup>th</sup> August 2023.

Counsel for the Applicant was of the view that, in view of the foregoing, the delay was technical in the sense that the Applicant filed Misc. Land Application No. 40 of 2023 on the pretext that the

Honourable court granted fourteen days to file the same to re-hear Land Appeal No. 14 of 2017, only to note that it was not the position.

The Counsel fortified his submissions by referring to me the following decided cases: ***Mkurugenzi wa Nelis v. Eiiabcassius, Land appeal No. 73 of 2010, HC at Mwanza; Diana Rose Spare parts LTD v. Commissioner of TRA, Civil Appeal No. 245 of 2021, CA at Dar es salaam; Mwatex (2001) Ltd v. Registered Trustees of KKKT, Misc. Land Application No. 206 of 2014; Fortunatus Masha v. Willium Shija & Another (1997) TLR 154.*** He noted that, in all cases, the courts were of the considered opinion that if the applicant has shown sufficient cause, an order of extension of time can be granted. He added, as shown under paragraph 6 of the affidavit, the application has overwhelming chances of success.

Lastly, Mr. Innocent Kisigiro reminded this Court of the need to administer justice and do away with technicalities in view of article 107A of the Constitution of the United Republic of Tanzania, 1977. He, thus, prayed for this Honourable court to grant the application.

On his part, Mr. Emmanuel John, the learned counsel for the Respondent submitted forcefully that the Ruling in Miscellaneous Land Application No. 8 of 2023 was pronounced on 19<sup>th</sup> July 2023 and a Notice of Appeal was supposed to be filed not later than 19<sup>th</sup> June 2023. But the Applicant did not do that. He cited case of ***Halifan Sudi v. Abieza Chichi (1998) TLR 527*** and specifically was of the view that court records should not be lightly impeached.

To add, Mr. Emmanuel submitted that, on 19 May 2023, Miscellaneous Land Application No. 8 of 2023 was dismissed and that is what can be reflected from the records. To hold otherwise, it is as good as impeaching the court records and by doing so will lower the esteem this Honourable Court. That there is no substantive evidence warranting the fact that what was heard on 19<sup>th</sup> May 2023 is different from what was written on the hard copy of the typed ruling.

Mr. Emmanuel was also of the view that it was unsafe for the learned counsel for Applicant to file Miscellaneous Land Application No. 40 of 2023 without having a written and or typed Ruling in Miscellaneous Land Application No. 8 of 2023. And that there was no evidence that the said ruling was received on 18<sup>th</sup> July 2023, Mr. Emmanuel added. He distinguished all cases as cited by the learned counsel for the Applicant and added that, in order to give effect and certainty to the court records, the application should be not granted, he finalized.

Rejoining what was submitted by Mr. Emmanuel John, Mr. Innocent Kisigiro submitted that the Applicant is not impeaching the decision of this Honourable Court. What he meant was that on 19<sup>th</sup> May 2023, what was heard is different from what can be read from the typed script. That having received the said ruling, he had to withdraw Miscellaneous Land Application No. 40 of 2023. He agreed that there is no evidence that he received the ruling on 18<sup>th</sup> July 2023. On the issue of the cited cases which were distinguished by Mr.

Emmanuel John, Mr. Innocent Kisigiro was of the views that all the cases were applicable in the circumstances. He prayed that this application be granted with no order as to costs.

On my part, the issue here is whether the application to extend time to file a Notice of Appeal to the Court of Appeal of Tanzania out of time 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 from the decision of the High Court. ***Rule 83 (1) and (2) of the Tanzania Court of Appeal Rules of 2009 as amended***, provides that a written Notice of Appeal must be lodged to the Registrar of the High Court within thirty days of the date of the decision against which it is desired to appeal. The rule reads;

*(1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.*

*(2) Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of the date of the decision against which it is desired to appeal.*

In the case of ***Mechanical Installation and Engineering Co. LTD v. Abubakar Ndeza Maporo & Another (1987) TLR 44***, the court viewed that the delay in filing a notice of appeal to the Court of Appeal and the absence of any application for extension renders the intended appeal incompetent. However, in the case of ***Godwin Karoli Ishengoma V. Tanzania Audit Corporation (1995) TLR 200***, the Court was of the view that in order to justify extension of

time, there must be some materials on which the court can exercise its discretion (see also page 935, ***Ratman V. Cumarasan & Another (1964) 1ALL E.R 933*** at page 935).

In the case of ***Mansoor Daya Chemicals v. NBC***, Civil Application No. 88 of 2016, CAT at Dar es Salaam (unreported), the Court had this to say;

*"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".*

Guided by the above position, I am now in the position to determine the Application. I will start with issue as to whether the Applicant has advanced justifiable reasons warranting extension of time. It was submitted by the learned counsel for the applicant that the reason for the delay was caused by the fact that what was heard orally on 19<sup>th</sup> May 2023 amounted to granting fourteen days to file application to re-hear Land Appeal No. 14 of 2017. Basing on that, Miscellaneous Land Application No. 40 of 2023 was filed. However, later on, having received a hard copy of it, it was learnt that in fact, the Honourable Court did not grant the application rather dismissed it



for lack of merit. Mr. Emmanuel John did not subscribe to that story. He advised the Court to adhere to its own records.

I carefully went through the records of this Honourable Court in Miscellaneous Land Application No. 8 of 2023 (Hon. Robert, J) and noted that at page 14 of the typed proceedings, Mr. Innocent Kisigiro and Mr. Emmanuel John learned advocates appeared for the Applicant and Respondent respectively on 19<sup>th</sup> May 2023.

Equally, therefore, the one who is said to have received the Ruling orally on 19<sup>th</sup> May 2023 is Mr. Innocent Kisigiro, the learned counsel and not the Applicant himself. If we are to go by the Applicant's proposition therefore, there is a danger of lowering the esteem of the learned counsel to which I'm not ready. It goes without saying therefore that he was supposed to swear an affidavit to that effect. As such, the Affidavit by the Applicant, especially paragraph 5, is a mere hear say because he was not present on the material day.

Mr. Innocent submitted that the applicant is not impeaching the records of this Honourable court in Miscellaneous Land Application No. 8 of 2023. With all due respects, that is not what can be seen from his submissions. The fact that the Applicant avers that what was pronounced orally is not what can be seen from the typed Ruling, he is impeaching the court records and no any reasonable person can think otherwise. I say this because impeachment has a meaning corresponding to the action of calling into question the integrity or validity of something. The Applicant is questioning the validity of the



Ruling of this Honourable Court in Miscellaneous Land Application No. 8 of 2023. **Black's Law Dictionary, 9<sup>th</sup> Edition** defines the word "impeachment" to mean "***A party's attack on a verdict alleging impropriety by a member of the jury***".

The applicant thinks and believes that there is a variance between the oral and the typed ruling in Miscellaneous Land Application No. 8 of 2023. In that respect, he is attacking the propriety of the said ruling as it does not resemble, in terms of the verdict, with the typed one. To maintain certainties, accuracy, respect, decorum and or propriety of the Court records, impeachment should be the last avenue a party may take.

I agree with Mr. Emmanuel John that the allegations that what was pronounced orally on 19<sup>th</sup> May 2023 is different from what the typed script reveals is neither here nor there because there is no evidence to that effect. As said before, even the learned counsel for the Applicant who, by records was present, did not swear an affidavit. In such circumstances, I cannot hold otherwise without evidence on records. What I have here is the records reflecting what took place on 19<sup>th</sup> May 2023. I cannot venture into what is not before me otherwise there would be no need of having court records. Nor I am ready to open **a new pigeon hole** in our legal jurisprudence.

As correctly cited by Mr. Emmanuel John, in the case of ***Halfani Sudi v. Abieza Chichili (1998) TLR 527 (CA)*** the court had this to say thus;

*"We entirely agree with our learned brother, MNZAVAS, J.A. and the authorities he relied on which are loud and clear that "A court record is a serious document. It should not be lightly impeached"*

*"there is always the presumption that a court record accurately represents what happened". In this matter we are of the opinion that the evidence placed before us has not rebutted this presumption".*

Since the records reflect what happened on 19<sup>th</sup> July 2023, I see no reason to rebut such presumption. I say this because nothing has been placed before the Court to rebut such presumption.

Having so observed, I am of the considered opinion that Miscellaneous Land Application No. 40 of 2023 was misplaced. There was no reason of having it filed. As alluded by Mr. Emmanuel John, it was dangerous on the part of the Applicant to take such course without a written or typed script of the Ruling in Miscellaneous Land Application No. 8 of 2023.

Mr. Innocent submitted that the ruling in Miscellaneous Land Application No. 8 of 2023 was received by the Applicant on 18<sup>th</sup> July 2023. Mr. Emmanuel forcefully disputed such proposition as there was no evidence to that effect. In rejoinder, Mr. Innocent conceded to what was said by Mr. Emmanuel. I agree with Mr. Emmanuel that there was a need to provide evidence on when the said ruling was

received and or whether the Applicant happened to request the same, short of which, this Honourable Court cannot believe on such proposition albeit, that was not among the grounds. With what I have said, and being the only reason advanced, this Application must fail. The Applicant has not advanced justifiable reasons for the delay. What was advanced, very unfortunate, can not be relied on in the absence of the evidence.

In the result, this application is dismissed for lack of merits. The Applicant has failed to provide compelling reasons justifying extension of time to file a Notice of Appeal to the Court of Appeal of Tanzania out of time. Considering the circumstances, there will be no order as to costs.

I order accordingly.

Right of appeal to the Court of Appeal of Tanzania fully explained.

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



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