

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. LAND APPLICATION NO. 91 OF 2022

YUSUPH MOHAMED HEMEDI.....APPLICANT

VERSUS

ADIJA MNYARU.....RESPONDENT

(Arising from the Judgment of the High Court of Tanzania at Dodoma

Dated 18th day of May, 2022

In

Misc. Land Appeal Case No. 72 of 2019

.....

RULING

Date of last Order: 31st October, 2023

Date of Ruling: 9th November, 2023

SARWATT, J;-

This is an application for an extension of time to file an application for the certificate on the point of law for the applicant to appeal to the Court of Appeal of Tanzania.

The application has been made under section 11 (1) of the Appellate Jurisdiction Act, Cap.141 R.E 2019, accompanied by a chamber summons containing the following prayers;

- 1. That, this honourable Court be pleased to grant an extension of time to file an application for certificate on point of law certifying that there are points of law to be determined in the Court of appeal against the decision of the High Court in misc. Land Appel Case No. 72 of 2019 before Hon. Kagomba, J dated 18th May,2022.*
- 2. The costs of this application be provided for.*
- 3. Any other order(s) that this honourable Court may deem fit and just to grant.*

It has been supported by the applicant's affidavit affirmed on the 3rd October 2022.

According to the applicant's affidavit, the applicant was the appellant in Misc. Land Appeal Case No. 72 of 2019 at the High Court and the decision entered against him. Aggrieved with the decision, he filed a notice of appeal to the Court of Appeal of Tanzania. Still, he failed to apply for the certificate on the point of law within time due to being supplied with a copy of the judgment and decree on 3rd October 2022, out of thirty days.

This application was heard on 31st October 2023, whereas the applicant was represented by Mr. Fred Kalonga, Learned Advocate, while Mr. Lukas Komba, Learned Advocate, appeared for the respondent.

Submitting in support of the application, Mr. Fred Kalonga prayed the affidavit of the applicant in support of the application to form part of his submissions. He stated that this application was made under Section 11(1) of the Appellate Jurisdiction Act, praying for an extension of time to file an application for the certificate on the point of law against the decision of this Court in Misc, Land Appeal Case No. 72 of 2019 which was delivered on 18/5/2022. He added that, after being aggrieved by the decision, the applicant filed a notice of appeal and wrote a letter to be supplied with a judgment, decree, and proceedings. He was supplied with the judgment and decree on 3rd October, 2022, while the 30 days to apply for the certificate on the point of law had expired. He, therefore, prayed this application be granted.

Opposing the application, Mr. Lukas Komba, Learned Advocate for the respondent, prayed the counter affidavit to be adopted and form part of his submissions. He stated that the applicant has no valid reason for an extension of time as he wrote the letter on 27th May 2023, but in his affidavit, the applicant did not state if he made any effort to follow up on

the said document. There is nowhere it is endorsed that the applicant was served with them as he alleged. He prayed this application be dismissed with costs.

In reply, Mr. Fred Kalonga, Advocate reiterated his submission in chief and insisted that the applicant wrote a letter. Still, the Registrar never replied and said they were supplied with the documents on 3rd October, 2022. He therefore, prayed this application be allowed.

That being the summary of the submissions, affidavit and counter affidavit filed in support and oppose the application, the issue for determination is whether the applicant shows good cause to move this Court to grant the application.

The applicant's affidavit, in particular, paragraph 5, provides the reason for the delay;

5. That, after filing the notice of appeal through my lawyer I wrote a letter to request the copy of judgment, decree and proceedings whereas only the judgement and decree were supplied to me via my Advocate on 03/10/2022 whereas thirty days to file an application for certicate on point of law had elapsed hence this application. (copy of the judgement dated

18th May 2022 and decree dated 3/10/2022 and letter is attached collectively annexture P2 to form part of the affidavit."

To start with, it is a settled principle of law that, for an application for extension of time to be granted, the applicant must advance good cause for the delay and account for each day of delay.

However, this Court has been conferred with the discretion to extend the time for the applicant to apply out of time to file an application for the certificate on point of law to the Court of Appeal. Section 11 (1) of the Appellate Jurisdiction Act, Cap.141, reads as hereunder;

"11(1) Subject to subsection (2), the High Court or where an appeal lies from a subordinate court exercising extended powers, the subordinate Court concerned, may extend the time for giving notice of intension to appeal from a judgment of the High Court or of the subordinate Court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired. "

In ascertaining if sufficient cause has been established, regard has to be given to each case's peculiar circumstances. In the case of **Lyamuya Construction Company Limited vs. The Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported), regarding extension of time, the Court of Appeal set key conditions on which sufficient cause may be gauged. These are: -

- 1. The applicant must account for all the period of delay.*
- 2. The delay should not be inordinate.*
- 3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- 4. If the Court feels that there are sufficient reasons such as existence of a point of law of sufficient importance such as illegality of the decision ought to be challenged.*

In the instant application, the circumstances leading to the delay are clearly stated in paragraph 5 of the applicant's affidavit supporting

this application that was due to be supplied with a copy of judgment, decree, and proceedings out of time.

Essentially, this Court delivered its judgment on 18th May, 2022. The letter to request a copy of the judgment, decree, and proceedings was written on 25th May, 2022. The decree shows on page 2 that the applicant issued the same on 3rd October, 2022. He filed this application on 11st October, 2022.

Counting from the date of the judgment to the date of filing of this application, the applicant is late for five months and 11 days. Indeed, my perusal of the court record has revealed that the applicant wrote a letter requesting a copy of the judgment, decree, and proceedings on 25th May 2022, and the copy of the decree shows that the applicant was issued the said copy on 3rd October, 2022. From 3rd October, 2022 (when the copy of the decree was issued) to 11th October, 2022 (when this application was filed), almost nine days lapsed, and the applicant had the duty to show good cause and account for each day of delay.

It is a trite law that every day of delay must be accounted for. In the case of **Sebastian Ndaula v Grace Rwamafa, Civil Application No. 4 of 2014** (unreported), the Court of Appeal stated that:


"Dealy 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 this application, the applicant failed to account for nine delayed days from 3rd October, 2022 (when he was served with the copy of judgment, decree, and proceedings) to 11th October, 2022 (the time of filling this application). To me, the delay of 9 days is inordinate, and the omission to account for them justifies this Court to state that the applicant has failed to establish good cause.

For the above reason, I find no merit in this application. The application is hereby dismissed. Each party is to bear its costs.


It is so ordered.




S. S. SARWATT
JUDGE
9/11/2023

DATED at **DODOMA** this 9th Day of November, 2023.




S. S. SARWATT
JUDGE
9/11/2023