

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO. 12 OF 2023

*(Originating from Misc. Land Application No. 48 of the High Court of Tanzania, Mbeya
Sub Registry)*

- 1. YOBU SIKILO**
- 2. HAJI MWAMELE**
- 3. SAIMON MASHAMBA**
- 4. BRAISON MWAMELE**
- 5. JOSEPH MWAMELE**
- 6. BEATUS MWALUVILO**
- 7. MATATIZO MUYUNGA**
- 8. GARVAS PAULO GOLIAMA**
- 9. NICK NKWAMA**
- 10. KUMBUSHO JULIUS**
- 11. SHUKU SAKANIKE**
- 12. HUZUNI KILEMILE**
- 13. PROSPA KAJWAMBALILA**
- 14. RASHID LAMSI**
- 15. BERNARD MWAGALA**
- 16. TWAHA KALINGA**
- 17. SHUKURU MIWALE**

.....**APPLICANTS**

VERSUS

FURAHINI VAHAYERESPONDENT

RULING

Date of hearing: 9/11/2023

Date of judgment: 7/12/2023

NGONGWA, J.

This is an application for extension of time within which to file of notice of appeal and leave to appeal to the Court of Appeal against the ruling of Mambi J, in Misc. Land Application No. 48 of 2020. It is made under section 11(1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019]. The Application is supported by the affidavit of James Bardon Kyando Counsel for the applicants and resisted by the respondent who filed counter affidavit.

Briefly the respondent successfully sued the applicants in the District Land and Housing Tribunal for Mbeya vide Application No. 157 of 2014. The application was decided in favour of the respondents. Aggrieved the applicants intended to challenge the decision in the High court but were late to file the same. They filed Misc Land Application No. 48 of 2020 for extension of time which was dismissed. Aggrieved the applicants filed their appeal to the Court of Appeal which was registered as Civil Appeal No. 43 of 2021, it was withdrawn later after being found incompetent for want of leave to appeal.

Following the withdrawal of the appeal, the applicant has approached this court seeking enlargement of time for filing notice of appeal and leave to appeal.

When the Application came for hearing parties were represented by Mr. James Bardon Kyando and Ms. Joyce Kasebwa, both learned counsels. By consensus parties agreed to dispose the application through written submission. Dutifully parties confirmed to the scheduling order of the Court.

In his submission Mr. Kyando stated that after decision in Misc. Land Application No. 48 of 2020, the applicants timely lodged notice of Appeal to the court appeal and the appeal was registered as Civil Appeal No. 43 of 2021. That the said appeal was withdrawn on 14th February 2023 for want of leave to Appeal and the present application was filed on 28th February 2023.

Mr. Kyando went on to state that from 14th to 28th February 2023, the applicant was waiting for typed order in Civil Appeal No. 43 of 2021 and preparation of this application. He submitted that from 10th September 2020 when ruling in Misc. Land Application No. 48 of 2020 was delivered to 14th February 2023 when the Appeal to the court of appeal was withdrawn was technical. That that technical delay amounts to sufficient reason for extension of time. The case of **Yara Tanzania Limited vs DB Shapriya &**

Co. Limited, Civil Appeal No. 498/2016(Unreported) was cited to support the argument.

Counsel for the applicants went on to state that ruling in Misc. Land Application No. 48 of 2020 involves point of law because the judge did not consider time requisite for obtaining certified copies of judgment and decree and that assessor's opinion was not considered in Land Application No. 157 of 2014.

He submitted that illegality by itself in the judgment and proceedings constitutes a sufficient cause to grant extension of time. He supported the argument with the case of the **Principal Secretary Minister of Defence and National Service Vs. Devran Valambia** [1992] TLR 387.

It was further submitted that the court should invoke overriding objectives provided under section 3A of the Civil Procedure Code [Cap 33 R.E 2019] and the case of **Dangote Cement Limited Vs. Nsk Oil and Gas Limited**, Misc Commercial Cause No. 08 of 2020 to support the argument. Mr. Kyando rested his submission with a prayer that the application be granted.

Replying to the above, Ms. Kasebwa submitted that there was no technical delay rather actual delay because order in Civil Appeal No. 43 of

2021 was certified in the same day that is 14th February 2023. She added that there was lack of diligence in prosecuting the matter by the applicants.

Regarding illegality, Ms. Kasebwa submitted that it was incorrect under the law to say that on illegality in the judgment and proceedings intended to be challenged suffice grant of extension of time, because illegality alone where there is no diligence in prosecution the action cannot stand. She cited the case of **Mtengeti Mohamed vs Blandina Macha**, Civil Application No. 344/17 of 2022 to support the argument. Thus prayed the application to be dismissed.

In rejoinder Mr. Kyando insisted that the applicant had managed to establish technical delay and that there was illegality in the ruling because the Judge did not consider point of law which had been raised.

Having examined chamber summons, the affidavits for and against the application and also having considered the submissions made by the counsel for the parties, the only issue for my determination is whether good cause has been shown by the applicants warranting extension of time as sought in the chamber summons.

I find it proper to begin my determination of the above posed issue by emphasizing that the mandate given to the Court under section 11 of the

Appellate Court Act, is not only discretionary and broad but must be exercised judiciously in accordance with the rules of reason and justice not according to private opinion or arbitrary. See **Lyamuya Construction Company Ltd. v. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

It is also settled that the Court can only exercise the powers under rule 10 of the Rules, if good cause is shown. Though there is no universal definition of what constitutes good cause, in exercising such powers, the Court is required to consider the prevailing circumstances of the particular case and should also be guided by a number of factors⁹ such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent and whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged. See- **The Principal Secretary, Ministry of Defence and National Service** (supra).

In the present application the reason for delay is associated with what is termed as technical delay and illegalities in the impugned decision. On technical delay counsel for the applicants submitted that from 20th September 2020 when ruling in Misc. Land Application No 48 of 2020 was

delivered were pursuing Civil Appeal No. 43 of 2021 which was withdrawn on 14th February 2023. The respondent did not dispute this line of argument.

Technical delay operates in that where an applicant has been in court's corridors in pursuit of his rights in good faith and consequently delays to take appropriate steps, that pursuit may constitute good cause for the purposes of extension of time. In **Tanzania Rent a Car Limited vs Peter Kimuhu** (Civil Reference No. 28 of 2019) [2023] TZCA 94 (TANZLII) the court stated;

'... many times without number, it has been pronounced by the Court that, times spent in court corridors by the applicant, like here, in further pursuit of his rights and resulting into delay, that delay is technical constitutes good cause for extension of time.'

Applying the principle to the present application the applicant has succeeded in establishing that from 20th September 2020 to 14th February 2023 was pursuing Civil Appeal No. 43 of 2023, such period has been accounted.

Another segment is from 14th February 2023 to 28th February 2023 when this application was filed. Mr. Kyando submitted that the time was spent waiting a copy the order and preparation of the application. Ms. Kasebwa submitted that the order was certified on the same date.

I have perused the affidavit and found that it is silence on when order in Civil Appeal No. 43 of 2021 was served to the applicant. A copy attached to the affidavit does not show when it was obtained by the applicant, therefore it remains mere allegation and I do agree with the respondents' counsel that it was ready on the day the order was delivered.

However, another reason given by the applicants was that the fourteen days was utilized for preparation of this application, the respondent did not dispute this. The position of the law is to effect that in an application for extension of time, the applicant has to account for every day of the delay.

After considering the circumstance of the case I find that the applicants have managed to establish the fourteen days from the date of withdrawal of Civil Appeal No. 43 of 2021 to when they filed this application. Explanation given in the affidavit particularly paragraph 8 is not inordinate for organizing all material necessary for drawing the present application. Therefore, the applicant has managed to account each day of delay.

On the issue illegality, I agree with counsels that illegality alone when sufficiently established constituted a ground for extension of time. But in the present application it will not detain me much as it cannot be resolved at this stage as it is the matter to be dealt in the intended appeal should the applicants manage to obtain leave.

From the foregoing, I find that the applicant has shown good cause for the delay, consequently fourteen days is granted to the applicant to file notice of appeal and leave to appeal from the date of this ruling. The costs of this application shall be in the cause.




V.M. NONGWA
JUDGE
07/12/2023

DATED and delivered at MBEYA this 7th day of December 2023 in presence of Ms. Joyce Kasebwa for Respondent.


V.M. NONGWA
JUDGE