

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

MISC CIVIL APPLICATION NO. 171 OF 2022

(Originating from the High Court Land Case No. 94 of 2016)

**HEMED JUMA ISANGU (Suing as
administrator of the deceased
estate JUMA ISANGU) APPLICANT**

VERSUS

JANETH HENRY FORSBROOKE RESPONDENT

RULING

10th October & 12th December, 2023

KAMUZORA, J.

By way of chamber summons, the Applicant herein, who is the administrator of the estate of the late Juma Isangu applied to this court for extension of time to file notice of appeal to the court of appeal out of time, from the decision of this court in Land Case No. 94 of 2016. The application is preferred under section 11(1) of the Appellate jurisdiction Act Cap 141 R.E 2019 supported by the affidavit sworn by the Applicant Hemed Juma Isangu. The Respondent contested the application through counter affidavit deposed by her.

From the record, the Applicant and the Respondents were parties in land case No 94 of 2016 which was finalised on 15th March, 2019 before this court in favour of the Respondent herein. It was alleged by the Applicant that the notice to appeal to the Court of Appeal was filed before this Court and Appeal was later preferred to the Court of Appeal that is Civil Appeal No 6 of 2022 but the same was struck out for being filed out of time. It is on that account that the Applicant preferred the current application seeking extension of time within which he can file a notice of appeal to appeal to the court of Appeal of Tanzania out of time. Hearing of the application was by way of written submissions and as a matter of legal representation, Mr. Samson Rumende drafted for the Applicant while the Respondent appeared in person with no representation.

Arguing in support of the application, the counsel for the Applicant submitted that, the grant of extension of time is discretion but the discretion should be judicially exercised upon being guided by certain principles. Reference was made to the cases of **The Principial Secretary, Ministry of defence and National Services Vs. Devram Valambhia** (1992) TLR 387, **Seleman Juma Masala Vs. Sylvester Paul Mosha and Japhet Matiku Ryoba**, Civil Application No 210/01

of 2017 and **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Appeal No 2 of 2010 CAT at Arush (Unreported).

It is the claim by the Applicants counsel that, after judgment in Land Case No. 94/2016 was delivered by this Court, the Applicant was not negligent rather, he filed his notice of appeal to the court of appeal timely. That, the Applicant is eager to challenge the decision of this court on account that there is illegality in the impugned decision as the Respondent lacked locus stand to sue or institute a suit against the Applicant. That, the Respondent did not obtain letters of administration hence, had no powers to sue the Applicant. The counsel for the Applicant prays that the application be granted.

In her response, the Respondent claimed that the Applicant departed from his pleadings. That, while the pleadings shows that the Applicant was seeking for extension of time to file notice of appeal, his submission shows that the Applicant seeking for an extension of time to file an appeal to the court of appeal of Tanzania hence, departing from the pleadings. She cemented her submission with the case of **Yara Tanzania Limited Vs, Charles Aloyce Msemwa t/a Msemwa Junior Agrovet & two others**, Commercial Case No 5 of 2012, **Grace**

Olotu Vs. Ami Ramdhani Mpungwe @ Ami Mpungwe @ A.R Mounuwe, Civil Appeal No 91 of 2020.

On the merit of the application, the Respondent submitted that the Respondent was taken by surprise by the Applicants act of departing from the pleadings. She maintained that since the Applicant is time barred, the current application be dismissed with costs.

In his rejoinder, Mr. Samson Rumende reiterated his submission in chief and added that, the Applicant is time barred and that is why the current application has been preferred. He insisted that the Applicant tried to account for the delay and explain the reasons for the delay. That, since the current application was preferred immediately after the decision of the Court of appeal, this application be granted.

I have given careful consideration to the arguments for and against this application. Before I deliberate on the merit of the application, I find it important to first tackle the issue raised by the Respondent in his submission, the Respondent is of the view that the Applicant departed from his pleading as he applied for extension of time to file notice of appeal to the court of appeal of Tanzania but the submission thereto is centred on extension of time to appeal to the court of appeal of Tanzania.

Upon reading the Applicant's chamber application and its supporting affidavit as well as the submission made thereto, I hasten to state that the Respondent's allegation is baseless. The prayer under the chamber application is for extension of time within which to file a notice of appeal to the court of appeal of Tanzania and the enabling provision supports the prayers sought. The submission made by the Applicant's counsel correspond the pleadings hence, the claim is baseless.

Reverting to the merit of application, the issue for consideration and determination is whether sufficient reasons has been advanced to warrant the extension of time sought by the Applicant.

It is an established principle of law that the decision to grant or not grant an order for extension of time is within court's discretion and that, such discretion should be exercised judiciously being supported by logical, valid, authentic and sound reasoning. It is therefore the duty of a party seeking an order to demonstrate sufficient reason(s) that prevented him/her from filing a suit/application/appeal within given time.

There is a surfeit of legal authorities in this respect including authorities cited by the counsel for the Applicant. In the case of

Benedict Mumelo vs. Bank of Tanzania, Civil Appeal No. 12 of 2002, the Court of Appeal of Tanzania held that;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

I have revisited the Applicant's affidavit and submission in support of application. In his affidavit in support of application, the Applicant advanced one reason for the grant of extension of time that is, technical delay. However, in his submission in support of application he raised point of illegality of the impugned decision as another ground for extension of time. Since the ground of illegality was not initially pleaded by the Applicant in his chamber application, this court opt the principle that parties are bound by their pleadings. I will therefore not waste my time in discussing illegality as ground for extension of time.

Regarding the ground of technical delay, I understand that, where a party timely files an appeal or any other matter in court but the court strikes it out for incompetence, that can be a sufficient ground for granting extension of time to file a competent matter. In the current application the affidavit as well as the submission by the Applicant's counsel shows that, after the decision in land Case No. 94 of 2016 was

made by this court, the Applicant lodged notice of intention to appeal to the court of appeal of Tanzania timely and later of lodged his appeal which was registered as Civil Appeal No 6 of 2020. That, the said appeal was technically struck out by the Court of Appeal for it was filed one day after the lapse of the statutory time. That the decision of the Court of Appeal structing out the Applicant's appeal was made on 28th November 2022 while the current application was preferred to this court on 12th December 2022.

It is unfortunate that there is no any decision or order attached with the affidavit to assist this court verify that there was indeed an appeal that was preferred by the Applicant to the Court of appeal and that the same was struck out for being incompetent. The Respondent raised this issue in his counter affidavit, it was therefore expected for the Respondent to file a reply giving details of what transpired in court. In this circumstance it was expected for the Applicant to support his assertion with documentary evidence as they could be obtained. The court order striking out the appeal was in my view, important to verify the application's assertion and the date the same was issued and see if the Applicant real accounted for the delay. since so such proof, technical delay cannot blindly apply in the current application.

That being said, I find no merit in the current application as the Applicant has failed to demonstrate good cause for delay and or account for the days of the delay to warrant this court to exercise its discretion and grant the order sought. The application is therefore dismissed with costs.

DATED at **ARUSHA** this 12th day of December, 2023



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

D.C. KAMUZORA

JUDGE