

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC LAND APPLICATION NO. 65 OF 2022

*(Originating from High Court of Tanzania at Dodoma Land Appeal No. 72 of 2020 High Court of Tanzania  
at Dodoma, Mambi J. Original Land Application No. 27 of 2016 District Land and Housing  
Iramba/Kiomboi)*

MUSSA SALIM ..... APPLICANT

VERSUS

HALMASHAURI YA KIJIKI CHA

SENE AND 23 OTHERS .....RESPONDENTS

RULING

*Date of last order: 26/10/2023*

*Date of Ruling: 4/12/2023*

**KHALFAN, J.**

The applicant filed an application in this court by way of chamber summons, under section 11 (1) of the Appellate Jurisdiction Act [CAP 141 R.E 2019], (hereinafter referred to as the Act), seeking the following reliefs namely:

- i) That, this honourable court be pleased to extend time for the applicant to give notice of intention to appeal from the judgment of the High Court namely Land Appeal Case No. 72 of 2020.*
- ii) Costs be in the course.*



The application is being supported by an affidavit affirmed by the applicant. On the other hand, only the first respondent lodged a counter affidavit to contest the application. The rest of the respondents did not lodge counter affidavit to contest the application.

By the parties' consensus the application was disposed of by way of written submissions in which the applicant was represented by Mr. Samwel Mcharo learned counsel while it is on the first respondent who entered appearance.

In his submission in support of the application, Mr. Mcharo having adopted the affidavit in support of the application to form part of his submission, contended that the applicant filed land application No. 27 of 2016 before the District Land and Housing Tribunal against the respondents. He submitted that the outcome of the matter was that, the land in dispute was declared a government property owned by Tanzania Railway Corporation.

Mr. Mcharo submitted that the applicant was aggrieved with the decision hence he lodged Land Appeal No. 72 of 2020 before this court whose decision was delivered on 10/5/2022 in the absence of the applicant

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since he had engaged an advocate who failed to inform the applicant on the correct date of hearing and judgment.

Mr. Mcharo submitted that the applicant made a follow up on 28/7/2022 and he perused the record and discovered that the decision for Land Appeal No. 72 of 2022 was not in his favour and the copies of the decision were not ready to be supplied to the parties. He argued that the applicant therefore wrote a letter requesting for the said copy of judgment which has not been supplied to him todate.

Mr. Mcharo contended that there are illegalities on the impugned decision which want the Court of Appeal to address them regarding the process of acquisition of land. He faulted the trial tribunal for holding that the suit land belongs to the Tanzania Railway Authority without it being a party and since it is a government institution, the trial tribunal lacked jurisdiction to entertain the matter. He therefore urged the court to grant the prayers sought in the application.

In reply, the first respondent opposed the application claiming that the applicant had failed to advance sufficient reason for the court to extend time. it argued that the applicant throws the blame on the advocate which is not

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a sufficient reason as it was held in the case of **Lim Han Yun v. Lucy Theseas Kristensen** Civil Appeal No. 219 of 2019 Court of Appeal of Tanzania, **Salome Kahamba v. Siril Augustine Mallya** Misc. Application No. 557 of 2022 **Bahati M. Ngowi v. Paul Aidan Ulungi** Misc. Civil Applications No. 490/13 of 2020 Court of Appeal of Tanzania at Songea (both unreported).

As to the issue of illegality, the first respondent argued that such claims do not have merits as they do not touch the decision of this court. The first respondent therefore contended that the applicant has failed to act with due diligence in filing the notice of appeal. Therefore, the application should be dismissed with costs.

In rejoinder, the applicant essentially reiterated his submission in chief.

Having gone through the parties' rival submissions, the sole issue for my determination is whether the applicant has advanced sufficient reason for the court to exercise its discretion for the extension of time.

As stated before, the instant application has been preferred under section 11 of the Act. The said provision empowers the court to extend time within which to file a notice of intention to appeal. Although the provision

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referred to does not state the factors for determination when the court determines an application for extension of time, I am of the settled view that the applicant must advance good and sufficient reasons for the delay.

In the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated that:

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."*

It follows therefore that, what constitutes good cause depends on the circumstance of each case. However, from the decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account were succinctly stated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, (supra) as follows:

*"(a) The applicant must account for all the period for delay;*



*(b) The delay should not be Inordinate;*

*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

The applicant has argued that, failure to lodge the appeal in time was attributed to the fact that the impugned decision was delivered in his absence as he had engaged an advocate to represent him but the said advocate did not inform him (the applicant) of the date of hearing as well as delivery of judgment. I have keenly gone through the affidavit in support of the application, the applicant could not even mention the name of the advocate he had engaged. Equally, there is no even the affidavit of the said advocate to support of the applicant's statement.

Rightly as argued by the first respondent in view of the authorities he has referred to; advocate's negligence cannot be a sufficient reason for the extension of time since the applicant had a duty to make follow up of his case. I have keenly gone through the record, truly as argued by the applicant, the decision was delivered on 10/5/2022, but he himself was

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aware of the date the decision was to be delivered because he was present on the previous date namely 22/4/2022. Hence, the claims that the applicant was not informed of the date the matter was coming for judgment is seriously wanting in merit. He was therefore required to account on each day of the delay.

The need to account for each day of the delay has been restated in a number of cases. To mention but few, **Elifazi Nyatega & 3 Others v. Caspian Mining Ltd**, Civil Application No. 44/08 of 2017, **Moses Mchunguzi v. Tanzania Cigarette Co. Ltd**, Civil Application No. 531/4 of 2016, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007, (all unreported). In the latter case the Court of Appeal emphasized that:

*"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."* [Emphasis added].

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It follows therefore that; the applicant has failed to account for each day of the delay since the decision of this court was delivered i.e. 22/5/2022 to 2/8/2022 which is period of more than a month.

As to the claim of illegality, as rightly argued by the first respondent there is no claim of illegality in the decision of this court but also such illegality should have been taken into account simultaneously with the accounting of each day of the delay which as I have stated before, the applicant has failed to discharge that duty.

Based on the above reasons, I find that the applicant has not advanced a good cause for the court to grant him extension of time. The application is therefore dismissed for lack of merits. In the circumstance, I will not make an order as to costs.

It is so ordered.

**Dated at Dodoma** this 4<sup>th</sup> day of December 2023



  
**F. R. KHALFAN,**

**JUDGE**

**4/12/2023**