

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

**MISCELLANEOUS LAND APPLICATION NO. 48 OF 2023**

(Arising from Miscellaneous Land Application No. 49 of 2021 and Land Appeal No. 11 of 2017 of the High Court of Tanzania, Dodoma.)

**HAMADI ALI PIRO ..... 1<sup>ST</sup> APPLICANT**  
**IDDI JUMA MASEREMU.....2<sup>ND</sup> APPLICANT**

**Versus**

**ISSA R. CHUKA .....RESPONDENT**

**RULING**

Date of Last Order: 23<sup>rd</sup> February 2024.

Date of Ruling: 28<sup>th</sup> March 2024.

**MASABO, J:-**

By a chamber summons filed under section 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E 2019], leave for extension of time is sought to enable the applicant to file an application for certification that his intended Appeal to the Court of Appeal against the decision of this court in Land Appeal No. 11 of 2017 has a point of law. Supporting the application is a joint affidavit sworn by the applicants, Hamadi Ali Piro and Idd Juma Maseremu. In this affidavit, it is deponed that after the applicants were aggrieved by the decision of this court in Land Appeal No. 11 of 2017 delivered on 30/11/2017, they appealed to the Court of Appeal. Their appeal was timely filed and admitted as Civil Appeal No. 339 of 2019. The appeal did not proceed on merit as it was struck out on 1st June 2021 after the Court found that it was filed out of time and in the absence of a certificate of delay by the Registrar of the High Court. To reinstitute the appeal, they successfully applied for an extension of time to file a notice of appeal vide Misc. Land Application No. 49 of 2021. After

this application was granted, they filed the present application. Based on this background, it was deponed that the delay is technical one hence excusable.

On 12th February 2024, the parties appeared before me for a *viva voce* hearing. The applicants were represented by Mr. Mcharo Samwel, learned counsel whereas the respondent appeared in person, unrepresented.

Submitting in support of the application Mr. Mcharo adopted the affidavit supporting the application and argued that the delay has been occasioned by two factors. First is a technical delay occasioned while the applicant was in pursuit of previous legal matters. He reiterated the background stated above and submitted that, since the applicants spent time in pursuit of the court proceedings, they had instituted in the apex court and this court, they should be excused as the delay was not occasioned by their negligence. It was a mere technical delay. In fortification, he cited the case of **Fortunatus Masha vs. William Shija and Others** (Civil Appeal No. 43 of 1996) [1997] TZCA 51 TanzLII.

On the second ground of delay, he submitted that there are points of law to be determined and he mentioned such points as follows: the ward tribunal had no jurisdiction to entertain the application as the application was filed out of time; the tribunal had no appropriate coram and there was no administrator of the estate of Bi. Saada Rashid Yusuph. Also, the Court of Appeal has to determine whether the grant of land by the village council can be vitiated by a private/individual land purchase agreement.

He submitted that these points constitute an illegality and as per the case of **The Principal Secretary Ministry of Defence and Notional Service Vs. Devram Valambia** [1991] TLR 387, they suffice as a good cause for delay. In conclusion, he prayed that the application be allowed.

The respondent was brief in his reply. He submitted that this application should not be allowed as it has no merit. The applicants have no reason for failure to obtain the certificate of delay. They had a lawyer who knew all the procedures and it is irrational why he did not obtain it. He added that the longer time spent in the pursuit of the present application and the antecedent matters have been affecting him economically and psychologically as the applicants have continued to occupy the suit land and benefit from it. He prayed that the application be dismissed

I have dispassionately considered the above submissions alongside the affidavit bracing the chamber summons, its supporting documents and the respondent's counter affidavit. It is a settled law that an application for leave for extension of time such as the one at hand is entirely within the discretionary powers of this court (see **Mumello Vs Bank of Tanzania** [2006] TLR 227 and **Kalunga and Company Advocates Vs National Bank of Commerce** [2006] TLR 235). Such powers being judicial must be judiciously exercised upon a good cause for delay being demonstrated. (see **Finca (T) Ltd & Another vs. Boniface Mwalukisa**, (Civil Application No. 589/12 of 2018 [2019] TZCA TanzLII 93). What amounts to a sufficient or good cause is not universally defined but through case law, a non-exhaustive list of factors for consideration has been developed (see **Lyamuya Construction Company Ltd v.**

**Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2 of 2010) [2011] TZCA TanzLII, and **Regional Manager TANROADS Kagera v. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007 (CAT-Unreported). According to these authorities, a good cause is established by looking at such factors as the duration of delay that is, whether the delay is not inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take. Existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged, also constitutes a good cause and so is a technical delay, simply understood as the delay resulting from the applicant's pursuit of legal action in court (see **Fortunatus Masha v. William Shija and Another** [1997] T.L.R. 154).

With these legal principles in mind, I have keenly followed the application and the grounds deponed in the applicants' joint affidavit. Their ground for delay has been deponed in paragraphs 2,3,4,5 and 6 of the joint affidavit. Mr. Mcharo has stated that they refer to two grounds, namely technical delay and illegality. Starting with the first ground of delay, the disposition in these paragraphs shows that, the applicants spent their quality time in pursuit of Civil Appeal No. 339 of 2019 which they had filed before the Court of Appeal. On 1st June 2021, the appeal was struck out. Immediately thereafter and desirous of restoring it, they applied for an extension of time within which to file the notice of appeal. The application was admitted by this court and registered as Miscellaneous Land

Application No. 49 of 2021. After it was determined they filed the present application.

The principle of technical delay as propounded in **Fortunatus Masha v. William Shija and Another (supra)** distinguishes actual delay and technical delay. Articulating this principle, the Court of Appeal stated that:

A distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly involved technical delays in the sense that, the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out of the first appeal. In these circumstances, extension of time ought to be granted.

Since the applicants herein were in pursuit of Civil Appeal No. 339 of 2019 before the Court of Appeal and Misc. Land Application No. 49 of 2021 before this court, the principle of technical delay is indeed relevant. However, needless to emphasize that this principle does not apply in isolation and to the exclusion of other requirements/principles such as the well-established principle that, the delay must be fully accounted for even if it is just for a single day. In other words, it is not sufficient for the applicant to just state that he was in pursuit of a legal action(s). He must specifically demonstrate the duration within which he was in pursuit of such actions so as to assist the court in determining whether the pursuit of such legal action was the sole reason for the delay.



The applicants herein have abdicated this duty. All they have stated is that after their appeal was struck out by the Court of Appeal on 1<sup>st</sup> June 2021, they applied for extension of time in this court. Their joint affidavit is conspicuously silent on the date when they applied for the extension of time within which to re-lodge the notice of appeal. It similarly does not disclose the date of determination of such application and the date on which they reinstated the notice. These dates are extremely crucial in this application in ascertaining whether the principle of technical delay is indeed applicable to the present case. Their omission has left me with no accurate materials on which to ground a finding that the applicants have fully accounted for the delay and that their delay is technical as opposed to actual delay which attracts consequences. On further perusal of the record, I have observed that the application for extension of time was determined on 5th July 2023 and the present application was filed 14 days later on 19th July 2023. It was, therefore, incumbent for the applicants to account for these days but they did not. Under the circumstances, the applicants cannot benefit from the principle of technical delay.

Turning to the point of illegality which is the second ground, Mr. Mcharo has pin-pointed four errors allegedly committed by the trial tribunal in its decision; that it had no jurisdiction, it was improperly constituted, one Bi Saada Rashidi Yusuph was not the administrator of Mohamed's estate and whether the grant of suit land by village counsel can be vitiated by private/individual land purchase agreement. It is a settled law that in an application for an extension of time where the applicant raises illegality as a ground, the Court has a duty to grant it (**VIP Engineering and Marketing Limited and Three Others vs Citibank Tanzania**

**Limited**, (Consolidated Civil References No. 6, 7 and 8 of 2006 [2007]TZCA 165 TanzLII)). Such a point must however be deponed in the affidavit and should not emerge from the bar as it appears to be the case here. The points articulated by Mr. Mcharo have not been deponed in the affidavit. Thus, they are merely from the bar and do not suffice as a good cause. However, on further reflection of the record and considering that this court has already extended the time for lodging the notice of appeal on the same ground that there is an illegality, I find it to be in the broad interest of justice that this application be granted as it is hereby done. The applicants are to file their application within 14 days. Costs shall be shared by each of the parties shouldering its respective costs.

**DATED** at **DODOMA** this 28<sup>th</sup> day of March, 2024.



**J.L. MASABO**

**JUDGE**