



**THE JUDICIARY OF TANZANIA**

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA**

**(CORAM: HON. AUGUSTINE RWIZILE)**

**MISCELLANEOUS CIVIL APPLICATION NO. 9 OF 2023**

**CHARLES NGOBETSE ..... COMPLAINANT / APPELLANT / APPLICANT /  
PLAINTIFF**

**VERSUS**

**JUMA LUPOLI ..... RESPONDENT / DEFENDANT**

**RULING**

**Fly Notes**

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**Facts**

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**Ratio Decidendi**

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15th of April 2024

**Hon. RWIZILE.:**

The applicant, Charles Ngobetse filed this application for the extension of time within which to file his appeal. Both the appellant and the respondent were represented. While the applicant was under the services of Mr. Kimilomilo learned advocate, the respondent was under the services of Mr. Sadiki learned advocate. As usual, the application is supported by the affidavit of the applicant stating grounds for delay.

Given a chance to argue the application, Mr. Kimilomilo stated that the reason for the delay was that the applicant was in court corridors seeking for justice. He argued that the applicant filed his appeal before this court. It was heard on merit and finally determined. When the aggrieved party appealed to the Court of Appeal, a point was raised that the appeal before this court was filed out of time. The Court therefore struck out the appeal paving the way to this application for extension of time. It was the learned counsel's view that the delay is therefore technical as the same was in court all that long. It was his prayer that this application be granted.

On the other hand, Mr. Sadiki asked this court to dismiss this application with costs. He argued that the delay was not in any way technical as argued, but an actual delay. He added that the applicant filed his appeal out of time, and it is the Court of Appeal that noticed the same in Civil Appeal No.487 of 2022. He further submitted that according



to the Law of Limitation Act, a Land appeal lies to the High Court within 45 days. He went on to state that the decision of the tribunal was delivered on 10.3.2021 and the appeal ought to be filed on 24 April 2021, but because the 24th and 25th of April were *dies non*, limitation was set on 26th April as the last day. Instead, the learned advocate argued, the same was filed on 26th May 2021, which was 30 days out of time. He therefore asked this court to dismiss this application with costs.

In a rejoinder, it was insisted that the appeal was filed, admitted, and heard. It was the Court of Appeal that noticed that it was out of time and so prayed the same be granted.

Having heard the submissions, it is important to point out that, extension of time is in the absolute discretion of the court. However, the applicant is required to state with certainty the reasons for the delay to coax, cajole, or charm the court to apply its discretion. The record has it that before the District Land and Housing Tribunal, was a Land Application No. 11 of 2014. The applicant lost, and the decision was pronounced on 10th March 2021. The applicant, successfully filed his appeal to this court on 26th May 2021, Land Appeal No. 18 of 2021. This court just heard it without vetting if it was properly before it. The respondent was aggrieved and then filed an appeal to the Court of Appeal, civil appeal No. 487 of 2022 which was struck out. The applicant called this state of affairs a technical delay since he was in court corridors searching for justice.

Basically, the applicant has accounted for all days from 26th May 2021 when Land Appeal No. 18 of 2021 was filed to 7th July 2023 when the Court of Appeal struck out Civil Appeal No. 487 of 2022. It is on record that from 7th July 2023 when the Court nullified the proceedings and the decision of this court to 13th July 2023 when this application was filed, it only took him 6 days. From the circumstances of this case and considering the steps taken by the applicant, at least the applicant was not sloppy in taking steps to file this application. I think that was proper.

My consideration further is on the 76 days he delayed before filing the said appeal. It was expected of the applicant to account for all days he delayed. There is no mention of what happened to him from when the judgment of the tribunal was delivered to when the said appeal was filed before this court.

The record is clear and the applicant admitted before the Court Appeal that the Judgement was delivered on 10th March 2021 and supplied with both the judgment and decree on the same day. The extract on pages 3 and 4 of the judgment of the Court, **Juma Lupoli vs Charles Ngobetse**, Civil Appeal No. 487 of 2022 (same parties) has all that transpired before the Court of Appeal.

*“Mr. Kabuguzi was the first to respond to our query. He contended that the appeal before the High Court was time-barred. It was pointed out by him that according to the record of appeal, on page 93, the decision by the DLHT was delivered on 10.3.2021 in the presence of both parties and that the right of appeal within 45 days was*



*also explained to the parties. He again referred us to page 96 of the record of appeal where it is shown that the petition of appeal was lodged on 26.05.2021. Mr. Kabuguzi further submitted that bearing in mind that the parties were supplied with the copy of the record on the same day the decision was delivered, that is, on 10.03.2021, then the appeal was lodged on 26.05.2021 and was filed out of time. In that regard, he argued that the High Court lacked jurisdiction to entertain the appeal. He thus urged us to nullify the proceedings in the said purported appeal and quash the resultant judgment. On his part, the respondent contended that he did not delay in filing the appeal. He argued that after the delivery of the decision by the DLHT, he complained to the Prevention and Combating of Corruption Bureau (PCCB) and that is where he was directed to go to the High Court. He beseeched us to hear and determine the merits of the appeal before us."*

It is crystal clear therefore that the applicant was out of time and had to account for all days he delayed which has not been done. The absence of any plausible explanation of the days delayed cannot lead this court to apply its discretion to grant this application. It should be noted that before the Court of Appeal, the applicant said, the reason for the delay was that after the judgment, he was aggrieved and filed a complaint to PCCB, where he was told to appeal before this court. Before me, the applicant did not say anything in that respect. The extract from the same judgment before the Court on pages 5 and 6, was that;

*"In the instant appeal, the record clearly shows that, while the decision by the DLHT was rendered on 10.03.2021, the appeal to the High Court against that decision was lodged by the respondent on 26.05.2021, which was after the expiry of 76 days and well beyond the period of 45 days as prescribed by section 41 (2) of the Act. It is also clear that before lodging his appeal, the respondent had not approached the High Court for an extension of time. The respondent's claim that after the decision by the DLHT, he submitted his complaints about his dissatisfaction with the decision to the PCCB before he was directed to go to the High Court, cannot rescue the situation at this stage."*

From the foregoing, I find no merit in this application. The applicant has not sufficiently shown why he did not file his appeal in time. This application is dismissed with costs.

**Dated at KIGOMA ZONE** this 15th of April 2024.

**AUGUSTINE RWIZILE  
JUDGE OF THE HIGH COURT**

