

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM.

MISCELLANEOUS CIVIL APPLICATION NO. 433 OF 2023

(Arising from Civil Appeal No. 341 of 2021)

ALLY ISMAILAPPLICANT

VERSUS

**JUMA IDD ALLY (The Administrator of the Estate of the Late Mwatanga
Tumai Kibwana)RESPONDENT**

RULING

Date of last order: 13/02/2024

Date of Ruling: 23/02/2024

A.A. MBAGWA, J.

This is an application for an extension of time within which to file a notice of intention to appeal against the judgment and decree of this Court (L. Mgonya J.) in Civil Appeal No. 341 of 2021 dated 6th June, 2023. The application is brought under the provisions of section 11(1) of the Appellate Jurisdiction Act and it is supported by an affidavit affirmed by Ally Ismail.

Conversely, the application was contested by the respondent through a counter affidavit sworn by Mr. Ambrose Malamsha, the respondent's learned counsel.

It is the applicant's contention that the judgment was delivered without notice to the parties. He further lamented that he came to know of the judgment on 9th August, 2023 through Advocate Edwin Lasteck Mushi who came across it in TANZLII while searching. The Applicant was dissatisfied with the judgment and decree hence he is determined to challenge it through an appeal to the Court of Appeal. However, by the time the applicant became alert of the judgment sought to be impugned, the statutory time for lodging a notice of appeal had lapsed. As such, the applicant had no other option except to bring this application.

On the adversary, the respondent opposed the application saying that the applicant had a duty to follow up on his case and for that reason, it was the respondent's view that the applicant has no good cause for extension of time. Nonetheless, the respondent did not dispute the applicant's contention that the judgment was delivered without notice to the parties and neither party was present in court on 6th June, 2023 when the judgment was delivered.

On 13th February 2024, when the application was called on for a hearing the respondent appeared in person whilst the applicant was absent. Nonetheless, having considered that both parties had filed their depositions on which the application is determined, I proceeded to fix a date of ruling. I did not see the reason for further adjourning the hearing



of the matter whilst the evidence was already in court. See the cases of **Atuwonekye Mwenda vs Hezron Mangula**, Misc. Land Application No. 5 of 2020, HC at Iringa and **Mohamed Enterprises (T) Limited vs Biashara Consumer Services Ltd** [2002] TLR 159,

It is noteworthy that in an application for extension of time, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

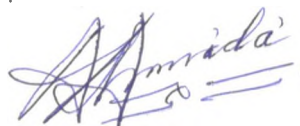
The law is settled that grant of extension of time is the exclusive discretion of the Court and the same must be exercised judiciously. See the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. I should also point out that, for the court to exercise its discretion properly, the applicant must adduce sufficient grounds for the delay.

It is a settled law that there is no fast and hard rule as to what constitutes good cause for delay instead, good cause is determined upon consideration of all the obtaining circumstances in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96 of 2007, CAT at Dar Es Salaam and **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam,

Considering the above position, through case laws, courts have prescribed various considerations which may be taken into account for establishing sufficient cause. The factors include illegalities in the impugned decisions, length of delay involved, reasons for the delay, the degree of prejudice, if any, that each party is likely to suffer, the diligence of a party, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwesa & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372 of 2018, CAT at Dar Es Salaam (unreported).

In the present application, the applicant states that he was not notified of the judgment date and this fact has not been countered. He further averred that he became alert of the judgment on 9th August, 2023 through Advocate Edwin Mushi.

I have scanned the application documents and noted that the present application was filed in this court on 15th August, 2023 which is almost seven days from the time he became aware of the delivery of the



judgment. In my considered view this was not an inordinate delay. I would say the applicant promptly acted.

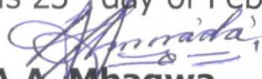
Having dispassionately considered the whole circumstances as presented in this application and alive to the constitutional right of appeal, I am opined that the applicant has demonstrated a good cause to warrant the extension of time. In the premises, I hold that the application is meritorious and for that reason I allow it.

The applicant is given thirty (30) days from the date of this ruling to file a notice of intention to appeal. No order as to costs.

It is so ordered

Dated at Dar es Salaam on this 23rd day of February, 2024




A.A. Mbagwa

JUDGE

23/02/2024

Court: The ruling has been delivered in the presence of Mr. Shabani Mwaita, learned counsel for the applicant and the respondent on this 23rd day of February, 2024.




A.A. Mbagwa

JUDGE

24/02/2024