

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB – REGISTRY OF MANYARA

AT BABATI

MISCELLANEOUS LAND APPLICATION NO. 8152 OF 2024

(Arising from Land Appeal No 8 of 2023 of Manyara Resident Magistrate’s Court, Extended Jurisdiction, Land Appeal No 21 of 2023, Miscellaneous Land Application No 74 of 2024, High Court of Tanzania at Manyara and originating from Application No 52 of 2022 of Manyara District Land and Housing Tribunal)

FARM GREEN IMPLEMENTS (T) LTD } **APPLICANTS**
PREMIUM SUPPORT CO. LTD }

VERSUS

YAHAYA MOHAMED MSUYA } **RESPONDENTS**
ISARIA MELEKI..... }
AMIRI MSANGI..... }

RULING

30th April and 20th June, 2024

MIRINDO, J.:

The two applicants, Farm Green Implements (T) Ltd and Premium Support Co Ltd, have applied for extension of time to appeal out of time against the decision of the then Manyara District Land and Housing Tribunal. The applicants unsuccessfully appealed to this Court in time but their appeal was struck out for

want of proper drawn order. They applied for extension of time but the application was struck out for being incompetent. This is their second application for extension of time.

The application has been argued by way of written submissions even though the third respondent defaulted appearance. In their chamber summons, they state two reasons in support of the application. The first reason is that there are technical delays and the second, there are points of law in a decision sought to be challenged. In their written submission, they provide a chronology of events leading to the instant application and argues that leave to appeal out of time is justified by technical delay. In support of their application, they referred to the decision in **Fortunatus Masha v William Shija and Another** [1997] TLR 154. In relation to the second reason, the applicants argue that the intended appeal involves determination of the plea of res judicata that was not properly dealt with by the trial tribunal.

In response, the first and second respondents attack the chamber summons on account that it does not refer to the decision against which the applicants seek an extension of time and contains grounds of extension of time which should have been disclosed in the supporting affidavit. They concluded that the chamber summons is defective.

I certainly agree that the chamber summons contain some defects but in view of the fact that the decision against which the extension is sought is stated in the supporting affidavit, I do not find the error to be a material irregularity. I am also not convinced that the second defect is too serious to disqualify the chamber summons.

On the merits of the application, the respondents contend that no law has been cited in support of the technical delay. I am surprised with this submission given that the case of **Fortunatus Masha** has been cited in support of this view.

It is clear that the ground of technical delay is governed by the provisions of section 21 of the Law of Limitation Act [Cap 89 RE 2019] which excludes the period which a party was "prosecuting, with due diligence" a defective civil proceeding "in good faith". There is no doubt that in the instant application, the applicants prosecuted an incompetent appeal and application and the only question is whether they did so diligently and in good faith. It was the respondents' contention that the applicants are not bona fide in prosecuting their case and are merely abusing the court process because they are still using the same advocate who repeatedly made incompetent applications.

For unknown reasons, the applicants in their rejoinder submission did not respond to this formidable attack on their plea of technical delay.

The circumstances of this application are governed by the principle reaffirmed in **Shanti v Hindocha and others** [1973] EA 207 at 209. The principle states that an extension of time will be granted if “the delay has not been caused or contributed to by dilatory conduct” of the applicant. In the absence of inaction and inordinate delay, the question for consideration is: has the applicant acted in bad faith when it promptly filed incompetent proceedings?

It is evident that the respondents attribute lack of diligence and good faith from the applicants’ counsel. The general rule stated in numerous decisions of the Court of Appeal is that advocates’ mistakes do not constitute sufficient or good cause for extension. This rule is however subject to exceptions as was held in the better-known case of **Yusufu Same and Another v Hadija Yusufu**, Civil Appeal 1 of 2002. In this case, the delay was attributed to the applicant’s counsel on when time started to run to apply for leave to appeal to the Court of Appeal. Given the history of the case and the circumstances of the applicant, the Court of Appeal held that advocate’s negligence constituted sufficient cause for extension of time. The matter resurfaced in **Attorney General v Twiga Paper Products Ltd**, Civil Application 108 of 2008 and **Mussa v Shinyanga Town Council**, Civil Application 3 of 2007 where it was reaffirmed that advocate’s mistake may constitute good cause for extension of time.

What emerges from these decisions is that prosecuting defective proceeding, without more, does not amount to bad faith. There is no evidence of bad faith. What is more, all incompetent proceedings were timely lodged in this Court. On this point alone, I am satisfied that the applicants have established good cause of technical delay for extension of time.

Having reached this conclusion, it is unnecessary to make a finding on the second point of point of objection.

It follows that the application is allowed and the applicants are hereby directed to file their appeal within forty-five days from the date of the delivery of this decision.

DATED at BABATI this 12th June 2024



F.M. MIRINDO

JUDGE