

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

**IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**MISC. LAND APPLICATION NO. 1121 OF 2024**

*(Arising from Land Appeal No. 01 of 2023 in the High Court of Tanzania Manyara Sub-registry and Land Appeal No. 114 of 2018 of Land and Housing Tribunal of Babati, Originating from Land Case No. 33 of 2017 at Wareta Ward)*

**ANGERA ERO ..... APPLICANT**

***VERSUS***

**STEPHANO QWARSE .....RESPONDENT**

**RULING**

*Date: 19<sup>th</sup> February & 4<sup>th</sup> March, 2024*

***Kahyoza, J.:***

**Angera Ero**, the applicant lost the appeal before this Court. Aggrieved, she intended to appeal to the Court of Appeal. She applied for leave. This Court struck out her application because the applicant had misdirected herself as she applied for leave instead of a certificate on point of law. As the record bears testimony, the parties' dispute commenced in the ward tribunal, for that a party aggrieved by the decision of this court was required to apply for certificate on point of law and not for leave to appeal.

The applicant instituted the current application seeking for leave to file an application for certificate on point of law out of time. The application was supported by an affidavit where the applicant deposed that she delayed to do so as she had previously filed Misc. Land Application No. 71/2023 which was struck out for being incompetent on 15.01.2024. After the application was struck out, the applicant immediately filed the instant application 22.01.2024 seeking for extension of time to apply for a certificate on point of law.

The respondent filed a counter affidavit to oppose the application. He deposed that the applicant had not disclosed sufficient reasons for delay. He prayed the application to be dismissed.

The issue to be determined is whether the applicant has adduced sufficient reason for delay. The principle governing an application like this one is clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227. In that case, the court observed as follows-

*"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause."*

The only reason advanced by the applicant for the delay to apply for a certificate on point is that she filed an application which this court struck out for being incompetent. The respondent opposed the application on the ground that the applicant did not disclose sufficient reason for delay. The applicant was all out to appeal to the Court of Appeal. Unfortunately, she applied for leave to appeal instead of a certificate on point of law. Consequently, the applicant's application was struck for being incompetent. It should always be kept in mind that courts do not exist to punish parties but to do justice, that is to say courts are not discipline masters yearning to punish the wrong doers. The applicant did not lie idle after the decision of this Court. She took step. Time passed when she was in the court of law. I am of the view, it is a circumstance similar to the one under consideration which led the Court of Appeal to state that there is a need to distinguish between actual delays from technical delays. Technical delays are those delays occasioned by the fact that an applicant is or was pursuing a legal remedy in wrong a court or instituted an action in a court of law with defective instruments. The position established by case law is that an applicant ought not to be condemned for technical delays.

I am of the view, that in the circumstances of this case, the delay was what the Court of Appeal described as technical delay in **William Shija and another v. Fortunatus Masha** [1997] TLR 213. The Court of Appeal stated the following -

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only 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 the first appeal. In these circumstances an extension of time ought to be granted."*

I am of the firm view that the applicant is not to be condemned for technical delays. There is yet another case of **Elibariki Asserinno V. Shifanya Mushi & Lewanga Kinado** [1998] TLR 81 where the Court was called upon to decide whether to extend time in a situation where an advocate had lodged the appeal in the wrong court, withdrew it and applied for extension of time to reinstitute it. The Court held that-

*"As the applicant had all the time been acting with diligence to ensure that his appeal is prosecuted but had run out of time because he, in his diligence, had lodged his appeal on the wrong court, the*

*delay in lodging this appeal fell under the ambit it of s. 21 of the Law of Limitation Act 1971, and there was good and sufficient cause for extending time to file the appeal in the proper court."*

In the upshot, I find that the applicant has exhibited sufficient reason for delay to warrant this Court to extend time to file an application for certificate on point of law. The applicant is granted 30 days within which to apply for certificate on point of law from the date of this ruling. No order as costs.

It is ordered accordingly.

**Dated at Babati** this 4<sup>th</sup> day of March, 2024.



A handwritten signature in black ink, consisting of a long horizontal stroke followed by a stylized name.

**John R. Kahyoza,  
Judge**

**Court:** Ruling delivered in the presence of the parties. B/C. Ms. Fatina (RMA) present

A handwritten signature in black ink, identical to the one above.

**John R. Kahyoza,  
Judge**

**4. 3.2024**

