

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 421 OF 2016

**TANZANIA TELECOMMUNICATION CO LTD..... APPLICANT
VERSUS
NICODEMUS GUARAID SEMU.....RESPONDENT**

Date of last order: 05/03/2018

Date of Ruling: 07/05/2018

RULING

Makuru, J.:

The Applicant, Tanzania Telecommunication Co. Ltd, has moved this court under **section 11(1) of the Appellate Jurisdiction Act 1979, Cap 141** seeking for extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania against the decision of this court. The chamber summons is supported by the affidavit of Lugano Rwetaka, the Company Secretary of the Applicant.

When the matter was called on for hearing Mr. Maguso Learned Counsel appeared for the Applicant while the Respondent was represented by Mr. R. Ishengoma Learned Counsel.

Submitting in support of the application Mr. Maguso argued that, despite the fact that the Applicant had applied for copies of proceedings, judgment and decree on time, to date he has not been availed with the same.

The learned counsel further contended that, the judgment which the Applicant intends to appeal against is tainted with several illegalities as pointed out in paragraph 7-11 of the supporting affidavit.

In reply thereto Mr. Ishengoma argued that, the Applicant has failed to adduce sufficient reasons for grant of extension of time. According to him, proceedings are not part of the requirements. In support of his argument the learned counsel cited the case of **Blue Line Enterprises Ltd versus E.A Development Bank**, H.C Misc Civil Cause No. 135 of 1995 (Dar es Salaam registry, unreported). The learned counsel further cited the case of **Kazi Kambi and two others v. Juma Mtoro and another**, Court of Appeal Civil Reference No. 15 of 1996 (Dar es Salaam Registry, unreported) whereby it was stated that, negligence or inaction on the part of the advocate cannot be a basis for extension of time.

In rejoinder Mr. Maguso clarified that, it is the copy of decision /judgment which has not been supplied to them and that the case of **Blue Line** (supra) is distinguishable from the present case because the former was an application for temporary injunction and the latter is for extension of time. The learned counsel further insisted that, the Applicant was not negligent in lodging an application for leave but rather it is the court which did not furnish the Applicant with the necessary documents.

When determining an application for extension of time, the court's duty is to see whether the Applicant has advanced sufficient reasons for the delay. This position was established by the Court of Appeal in a number of cases including the case of **BENEDICT MUMELLO versus BANK OF**

TANZANIA, Court of Appeal Civil Appeal No. 12 OF 2002(Dar es Salaam Registry, unreported) in which Kaji, JA (as he then was) had this to say:

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

Elaborating what amounts to sufficient cause, the Learned Justice of Appeal went further to cite with approval the case of **Tanga Cement Company Limited Vs. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001(unreported), where it was held that:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant."


In the instant case, the main reason adduced by the Applicant for the delay is that, copies of judgment and decree were not availed to her despite the fact that she applied for the same immediately after delivery of judgment. **Rule 49(3) of the Court of Appeal Rules, 2009** provides that, an application for leave to appeal to the Court of Appeal which is made at the High Court shall be accompanied by a copy of the decision or

order of the High Court which is intended to be appealed against. It states:-


"49(3) every application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and where application has been made to the High Court for leave to appeal by a copy of the order of the High Court".

It is apparent from the record that the Applicant was not availed with copies of judgment and proceedings in time. Hence, she could not make an application for leave to appeal in time. It is for that reason this application for extension of time has been made. I find that this is sufficient reason for the delay as it is beyond the Applicant's control.

Under the circumstances, I find merit in this application and hereby grant it without costs.


C.W. Makuru
JUDGE
07/05/2018

Court: Ruling delivered in court this 07th day of May, 2018 in the presence of Mr. Magusu learned counsel for the Applicant and Mr. Ndibalema learned counsel for the Respondent.


C.W. Makuru
JUDGE
07/05/2018