

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

MISC. LAND CASE APPLICATION NO. 552 OF 2016

(Originating from Land Case No. 317 of 2009)

ILALA MUNICIPAL COUNCIL.....APPLICANT

VERSUS

TWAHA RWEHABURA.....1ST RESPONDENT

**TWAHA RWEHABURA, (Duly appointed Attorney of
SUDI RWEHABURA and MAIMUNA RWEHABURA).....2ND RESPONDENT**

**TWAHA RWEHABURA (As the Administrator of the Estate
of Late ZARIATI RWEHABURA).....3rd RESPONDENT**

**ABDALLAH KIBADENI (As dully appointed Administrator
of Estate of the Late ATHUMANI SEIF).....4th RESPONDENT**

Date of Last Order: 18/07/2018

Date of Ruling: 23/08/2018

RULING

Makuru, J.:

The Applicant, **Ilala Municipal Council**, sought this application under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E 2002 for the following orders:

- i. That this court be pleased to extend time within which to lodge and serve notice of intention to appeal out of time.*
- ii. That this Honourable Court be pleased to grant the Applicant extension of time within which to file an application for leave to appeal to the Court of Appeal out of time.*
- iii. Costs of this Application be provided for.*
- iv. Any other orders the court may deem fit to grant.*

The application is supported by the affidavit of **Mashauri Musimu**, Legal Officer of the Applicant. The Respondents filed a counter affidavit challenging the application.

When the matter was called on for hearing the Applicant was represented by Mr. Tafisa, Learned Municipal Solicitor whereas the 1st Respondents appeared in person and represented the 2nd and 3rd Respondents as appointed Attorney and administrator of estate respectively. The matter proceeded ex-parte against the 4th Defendant who was duly served through Mwananchi Newspaper.

In support of the application, Mr. Tafisa contended that the main reason for the instant application is that on 11/05/2015 the hearing of Land Case No. 317 of 2009 was completed before Hon. Nchimbi, J. (As he then was) and the court informed them that the date of the judgment would be communicated to them through notice (Judgment on Notice).

He went on stating that to their surprise on 17/09/2015 while waiting for the said notice of judgment, they received a letter from the Respondent with Ref. No. DJ/TWAHA/317/2009/8 dated 16th September, 2015 informing the Applicant among other things, that the court had already delivered its judgment on the 31st day of July, 2015 in favour of the Respondents. Since 14 days to file a notice of appeal had already lapsed, he stated that they had to file this application.

Mr. Tafisa was of the view that there are legal issues which need to be tabled before the Court of Appeal for determination. Therefore, he prayed for the application to be granted as prayed.

In response, the 1st Respondent as a lay person prayed that the contents of the counter affidavit be adopted to form part of his submission. He conceded to the Applicant's submission that they were told by the court that they would be informed of the date of the judgment. He went on challenging the Applicant's application on the ground that the Applicant did not make a follow up of his case that is why he was not aware of the date of the delivery of the judgment. The Respondents submitted further that they made a follow up of their case and the court clerk informed them that the judgment had already been delivered and they were able to get copies of the judgment on 13/09/2015 and decree on 14/09/2015. He therefore prayed for the application to be dismissed with costs. In reply, Mr. Tafisa reiterated his earlier submission in chief.

Before dealing with the substance of this application in the light of the rival submissions, I find it pertinent to restate that although the court's power for enlarging time under Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 is both broad and discretionary, it can only be exercised if sufficient cause is shown.

The term sufficient cause has not been defined, so as to guide the exercise of the court's discretion, in this regard the court must consider the merits or otherwise of the excuse disclosed by the Applicant for failure to meet the limitation period prescribed for taking the required step or action.

Apart from valid explanation for the delay, good or sufficient cause would also depend on whether the application for extension of time has been

brought promptly and whether there was diligence on the part of the Applicant. The question now is whether the Applicant has shown sufficient cause for this court to exercise its discretionary powers to grant the application.

The main reason adduced by the Applicant for the delay is that he was not aware of the date of delivery of the judgment because he was not notified by the court of the same. Mr. Tafisa submitted that it was on 17th day of September 2015 when he became aware that the judgment was delivered on 31st July, 2015 in favour of the Respondents. Hence, on 12th October, 2015 he filed Application No. 603 of 2015 for extension of time to file a notice of appeal out of time and an application for leave to appeal to the Court of Appeal out of time. That the said application was withdrawn on 28th day of June, 2016 with the leave to re-file. Hence, this application.

It is my belief that since the court informed both the Applicant and the Respondents that they would be notified of the date of judgment then it was the duty of the court to make sure that both parties are given reasonable notice for them to appear in court on the date fixed for judgment.

In the cases of **Cosmas Construction Co. Ltd Vs Garments Ltd, [1992] TLR 127, Salum Sururu Nabhani Vs Zahor [1988] TLR 41** and **Khadija Rehire Saidi & 5 Others Vs Mohamed Abdallah Saidi, CAT Civil Application No. 39 of 2014 (Dar es Salaam Registry, Unreported)** it was held that, it is the duty of the trial court to serve notice of the date

set for delivery of judgment upon an absent party so that he may, if he wishes attend to take it as certain consequences may follow.

I am of the considered opinion that sufficient reasons have been advanced by the Applicant for this court to exercise its discretion to extend the time within which to file a notice of appeal out of time and an application for leave to appeal to the Court of Appeal out of time.

Having said so, the application is granted as prayed. The Applicant to file notice of appeal out of time and an application for leave to appeal to the Court of Appeal within 14 days from the date of delivery of this ruling.

It is so ordered.



C.W. Makuru
JUDGE
23/08/2018

Court: Ruling delivered in court this 23rd day of August, 2018 in the presence of Ms. Victoria Myambwa Learned Municipal Solicitor for the Applicant, 1st Respondent in person and representing the 2nd and 3rd as Respondents and in the absence of the 4th Respondent.



C.W. Makuru
JUDGE
23/08/2018