

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

MISC. LAND CASE APPL. NO. 795 OF 2016

HAMISI BUSHIRI PAZI.....1st APPLICANT

**HAMISI BUSHIRI PAZI (Administrator of the estate of the
deceased NEEMA BUSHIRI PAZI).....2ND APPLICANT**

**HAMISI BUSHIRI PAZI (As the administrator of the estate of the
deceased MWAJUMA BUSHIRI PAZI).....3RD APPLICANT**

STUMAI BUSHIRI PAZI.....4TH APPLICANT

HATUJUANI BUSHIRI PAZI.....5TH APPLICANT

VERSUS

SAUL HENRY AMON.....1ST RESPONDENT

S.H. AMON ENTERPRISES COMPANY LIMITED...2ND RESPONDENT

MUSA HAMISI KAZUBA.....3RD RESPONDENT

**KASSIM ALLY OMARI (As Administrator of the estate of the
deceased TATU BUSHIRI PAZI).....4TH RESPONDENT**

THE ATTORNEY GENERAL.....THIRD PARTY

RULING

Date of last order: 11/06/2018

Date of Ruling: 03/08/2018

MZUNA, J.:

This application is for extension of time to file an application for leave to appeal to the Court of Appeal out of time. The applicants made this application under Section 11(1) of the Appellate Jurisdiction Act Cap. 141

and Section 47 (1) and (3) of the Land Disputes Courts Act Cap. 216. The application is supported by the affidavits affirmed by the applicants.

The applicants were represented by Ms. Dorah Mallaba, learned counsel whereas the 1st and 2nd respondents were represented by Mr. Kalolo, the learned counsel. The 3rd respondent appeared in person unrepresented. With leave of the court, the application was disposed of by way of written submissions. Unfortunately, the 1st and 2nd respondents did not file their submission. I will dispose of this application based on the submissions filed by the applicants, 4th respondent and the Third Party.

Apparently, there was filed certificate of delay to the Court of Appeal well within time, however the same was struck out for failure to mention the name of the Third Party or even properly cite the names of the parties, see paragraphs 6 of the applicant's application.

The main issue is whether there is sufficient cause shown for the delay?

In support of the application, Ms. Mallaba stated that the delay in filing leave to appeal to the Court of Appeal was not a result of inaction or negligence on the part of the applicants or its advocates but rather it was

caused by the certificate of delay being defective hence rendered the Civil Appeal No. 68 of 2013 to be struck out.

That, after receiving a certified copy of the said ruling, necessary steps were taken by filing this application on 28th September 2016 as the time prescribed by the law had already expired.

Ms. Mallaba was of the view that should the application fail, the applicants will be prejudiced in this matter and would allow the respondents to benefit from illegality. She referred this court to the case of **Mobrama Gold Co. Ltd v. Minister for Energy** [1998] TLR 425 saying that the respondents will not be 'prejudiced' thereby and there is no 'procedural abuse'. That court's discretionary powers should be primarily on substantive justice citing the case of **Mwalimu Paul John Mhozya v. Attorney General** [1996] TLR 130. She therefore prayed for the application to be granted as prayed. The 4th respondent conceded to the application.

On his part, Mr. Nyakiha the learned State Attorney for the Third Party opposed the applicants' application on the ground that they have failed to account for each day of the delay. He is therefore of the view that no sufficient cause has been established citing the case of **Mumello v. Bank**

of Tanzania [2006] 1 EALR 227. He prayed for the dismissal of the application with costs.

I have keenly followed the grounds contained in the joint affidavit and counter affidavit together with the relevant law. It is a 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. In the case of **Yusuph Same and Hawa Dada v Hadija Yusuf**, Civil Appeal No 1 of 2002 (unreported) the Court of Appeal cited with approval the case of **Felix Tumbo Kisima v. TTC Limited and Another** Civil Application No. 1 of 1997 (unreported), where it was held that:-

"It should be observed that the term "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step."
(Emphasis mine).

Reading from the submission by Ms. Mallaba and the attendant affidavits filed by the applicants, I agree entirely that the delay was not caused by the applicants but due to technicalities which in view of what was held in the

of Tanzania [2006] 1 EALR 227. He prayed for the dismissal of the application with costs.

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Reading from the submission by Ms. Mallaba and the attendant affidavits filed by the applicants, I agree entirely that the delay was not caused by the applicants but due to technicalities which in view of what was held in the

case of **Fortunatus Masha v William Shija And Another** [1997] TLR 154 (CA) is sufficient reason justifying extension of time. A party cannot be penalized twice. The court held that:-

*"...A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. **The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal...**"* (Emphasis mine).


Similarly, the first certificate of delay having been struck out but filed well within time, a party cannot be penalized twice when he filed the present application. The argument that there was not accounted each day of the delay, with due respect is unfounded. The court record shows that after the appeal was struck out on 2nd day of September 2016 and after receiving a certified copy of the said ruling immediate steps were taken by filing this application on 28th September. So, even assuming such point is anything to

go by, a delay for less than a month cannot deny a litigant a right to relief especially after the court has demonstrated that such delay was due to technicalities as above shown.

For the above stated reasons, I am satisfied that there exist sufficient cause justifying this court to exercise its discretionary powers to grant the application. The application is granted.

The applicants to file application for leave to appeal to the Court of Appeal out of time within 14 days from the date of this ruling.

Application granted with no order for costs.


M. G. MZUNA,
JUDGE. 31/8/2018