

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

**MISC. LAND CASE APPLICATION NO. 809 OF 2018**

*(Arising from the Land Appeal No. 108 of 2017)*

**ABRAHAM Y. BAKARI.....APPLICANT**

**VERSUS**

**AGNES JUSTUS MWITA.....RESPONDENT**

**RULING**

**OPIYO, J.**

The application was filed under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 where Abraham Y. Bakari is seeking for (a) an extension of time for him to file a notice of Appeal out of time and (b) an extension of time to apply for leave to the Court of Appeal of Tanzania. His application is supported by an affidavit sworn by him, Abraham Y. Bakari.

Mr. Mashaka Edger Mfala, the learned Counsel for the applicant, in support of the application stated with the prayer to adopt the applicant's affidavit. For the reasons why the applicant delayed to take the intended actions within time he submitted it was caused by the fact that the applicant is a lay person, therefore, he was not aware of the time limitations of his legal rights. He had to seek assistance from Tanganyika Law Society which in turn assigned him (Mr. Mashaka) to help them. When all the arrangements and

preparations were complete, Mr. Mashaka realized that time to pursue the applicant's intended actions had expired hence this application. Mr. Mashaka insisted that, the decision to which the appeal is sought is tainted with illegalities and irregularity and these two constitutes sufficient course for extension of time as stated in the case of **The Principle Secretary of Defence and National Service versus Durvan P. Valambhia (1992) TLR 378.**

Advocate Kiondo for the respondent on the other hand, replying to the submissions by the applicant's counsel was of the view that, this application firstly is bad in law for being an omnibus application which cannot be maintained.

Secondly, the applicant has not shown any good course for his delay to take the intended actions rather there is a gross negligence on part of the applicant in handling of his own affairs. He argued that the applicant has failed to account for each day of delay and therefore his application should fail as given in the case of **William Shija versus Fortunatus Masha (1997) TLR 213, Court of Appeal of Tanzania.**

In his rejoinder the applicant's counsel reiterated his submissions in chief and insisted that a good cause has not been defined anywhere in our laws. He cited the case of **Samwel Munsiro versus Chacha Mwikambwe, Civil Application No. 539/08 of 2019, Court of Appeal of Tanzania, at Mwanza, (unreported)**, which cited in approval the case of **Regional Manager Tanroads Kagera versus Ruaha Concrete Company**

**Limited, Civil Application no. 99 of 2007 (unreported)** where it was stated that:-

*"what constitutes good (as it were the old rule) cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each case. This means that the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extent the time limited by rule"*

On the application being omnibus, the applicant's counsel argued that, this is a new fact that was not stated in the counter affidavit. He contended that, the respondent would have raised the same in a notice of preliminary objection. He maintained that, after all there is no law which bars the combination of two or more applications into one as decided in **Mic. Tanzania Ltd versus Minister of Labor and Youth development and another, Civil Appeal No. 103 of 2004, Court of Appeal of Tanzania, (unreported)**. Also in the case of **Tanzania Knitwear Ltd versus Shamshu Esmail (1989) TLR**, it was held that, the combination of two applications in one is not bad in law since courts of law abhor multiplicity of proceedings.

Having considered the submissions of parties through their respective counsels and also gone through the affidavit and counter affidavit in line with the application at hand, the first issue of determination in this case is whether the application is omnibus or not. This is a point of objection, which though raised at the submission level still court think it is prudent to be disposed as it touches the root of this application and the plaintiff had a chance to reply to it in rejoinder submission.

It is a settled law that two or more independent matters cannot go together in one application. Only interrelated application that can conveniently be jointly determined by the court can be combined (**see Daudi Lengiyu versus Dr. David E. Shungu Civil Appl. No. 28 of 2015 and Bibie Hamed Khalid versus Mohamed Enterprises Ltd and Two others, Civil Appl. No. 6 2011 (both unreported)**). Therefore the test for an omnibus application to be entertained in court is that the prayers contained in the chamber summons should be interrelated and capable of being joined. As it stands in this application; the two prayers in the applicant's chamber summons are well related and capable of being joined. Both prayers are on extension time, aiming at removing the obstacles (time limits) which have barred the applicant from pursuing his main goal which is to present his appeal to the Court of Appeal of Tanzania (**See Mic. Tanzania Ltd versus Minister of Labor and Youth development and another, Civil Appeal No. 103 of 2004, Court of Appeal of Tanzania, (unreported) supra**). This application is maintainable and not at all bad in law.

Now, whether the applicant has adduced sufficient reasons for his application to be allowed. In my view, he has given a sufficient reason on why his application should be allowed. It is true that, the applicant is a layman, and a poor person who cannot afford legal services therefore he had to look for legal assistance from TLS as per their attached letter dated 3<sup>rd</sup> October 2018. Although it has taken a long time to file this application from October 2018 to 30<sup>th</sup> July 2020, I find that not to be his fault, but of the Advocate charged with the duty to represent the applicant. This is one of the circumstances in which I find it is not fair to punish the applicant for mistakes of his Advocate

(see **Samwel Munsiro versus Chacha Mwikambwe, Civil Application No. 539/08 of 2019, Court of Appeal of Tanzania, at Mwanza, (unreported)**), which cited in approval the case of **Regional Manager Tanroads Kagera versus Ruaha Concrete Company (supra)**).

For the foregoing reasons, the application is allowed. The applicant to file both the notice of appeal and application for leave to appeal to the Court of Appeal within 21 days from the date of this ruling.



**M. P. OPIYO,  
JUDGE**

**10/12/2020**