

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**MISC. LAND APPLICATION NO. 553 OF 2020**  
*(Arising from the Application No.112 of 2009)*

**YUDA WENSTELAUS NDANU ..... APPLICANT**

**VERSUS**

**FRANK P. KIBONA ..... 1<sup>ST</sup> RESPONDENT**

**MOROGORO MUNICIPAL COUNCIL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of Last Order: 14.07.2021*

*Date of Ruling: 14.07.2021*

**A.Z. MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to extend time within the applicant to file an appeal to impugn the decision of the District Land and Housing Tribunal for Morogoro at Morogoro in Land Application No. 112 of 2009 delivered

on 9<sup>th</sup> April, 2020. The application is supported by an affidavit deposed by Prof. Cyriacus Binamungu, the applicant's Advocate.

When the matter was called for hearing on 14<sup>th</sup> July, 2021, the applicant enjoyed the legal service of Mr. Jackson Liwewa, learned counsel and the respondent had the legal service of Mr. Nyenyembe, learned counsel.

When the respondents learned counsel paraded the matter, Mr. Nyenyembe, learned counsel had no time to waste, he went straight to the point that they concede with the applicant's application. Cherishing the precious time of the court, Mr. Jackson has nothing to add rather he urged this court to grant the applicant's application without costs.

I have given due consideration to the submissions of both learned counsels, whereby the learned counsel for the respondent has conceded the applicant's application. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good

cause” having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few. Mr. Binamungu in his submission convinced this Court to find that the applicant’s delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra).

I have gone through the applicant’s affidavit and found that the applicant’s Advocate has demonstrated his technical delay on paragraph 5. Affidavit. The applicant’s Advocate stated that the applicant filed a Misc. Application No. 337 of 2020 and on 15<sup>th</sup> September, 2020 the said application was struck out by this court. Therefore the delay was beyond the applicant’s control. The technical delay is well elaborated in the above cited case of **Fortunatus Masha** (supra) that the technical delay is in the sense that the original appeal was lodged in time but the same was found incompetent thus fresh appeal has to be instituted.

Having unfleetingly reviewed the depositions in the affidavit and considering that the respondent concedes to the application. I am convinced that this case fits in the mould of cases for which extension of time on the ground of technical delay may be granted. Circumstances of this case reveal sufficient cause capable of exercising the Court's discretion and extend the time within which to file an application to lodge an appeal with a view to appeal to this court.

For the aforesaid reasons, I proceed to grant the applicant's application to lodge a Notice of Appeal with a view to appeal to the Court of Appeal of Tanzania within 21 days from today. Costs to be in the cause.

Order accordingly.

Dated at Dar es Salaam this date 14<sup>th</sup> July, 2021.

  
A.Z.MGEYEKWA

**JUDGE**

14.07.2021

Ruling delivered on 14<sup>th</sup> July, 2021 in the presence of Mr. Jackson Liwewa, learned counsel for the applicant and Mr. Nyenyembe, learned counsel for the respondent.



  
A.Z.MGEYEKWA

**JUDGE**

14.07.2021