

**IN THE HIGH COURT OF TANZANIA
LAND DIVISION**

AT DAR-ES-SALAAM

MISC. LAND CASE APPLICATION NO. 59 OF 2021

(Arising from Land Appeal No. 38 of 2017 High Court at Dar-es-salaam Land division)

HERY ABDALLAH..... APPLICANT

VERSUS

SALIMINA ALLY..... RESPONDENT

RULING

15.4.2021 & 19.4.2021

U. E. Madeha. J

HERY ABDALLAH, the Applicant, by way of Chamber Summons moved the Court under **Rule 11 (1) of the Appellate Jurisdiction Act, Cap 141 (R. E. 2019)** to extend the time within which to file an application for leave to appeal to the Court of Appeal against the decision of the High Court of Tanzania (Land Division) at Dar-es-Salaam Land Appeal No. 38 of 2017. The chamber summons is supported by an affidavit sworn by the applicant.

At the hearing of the application, the applicant was represented by Mr. Egidi. S. M. Mkoba, learned advocate, whereas the respondent appeared unrepresented. Both parties requested the application to be heard by way of filing written submissions.

However, the Court noted that there was a preliminary objection on wrong citation of the applicable law which was raised by the applicant. As such, the court wanted to know from the parties, whether the court had been properly moved to resolve the objection. Taking these circumstances into account, the main application and the preliminary objection were dealt with simultaneously. The issues to be dealt with are: Whether there was any wrong citation, and whether the applicant has given sufficient cause to justify the extension of time to file leave to appeal to the Court of Appeal.

The explanation and rationale put forward by Mr. Egidi S. M. Mkoba, the applicant learned counsel on the issues of wrong citation and extension of time were as follows:

The applicant learned advocate began by reacting to the preliminary objection. He argued that the respondent's counter-affidavit combined his answers with the preliminary objection which had it that "*There is wrong citation in the application.*" The current application is to apply for leave or certificate that the case is fit for appeal. He cited **Rule 48 (1) of the Court of Appeal Rules, 2019**, which provides a principle that, where a Court has jurisdiction to grant the order sought, the wrong citation (if any) or omission to cite a provision, can be ignored.

I went through the counter affidavit's paragraphs and found that, there was no preliminary objection in the counter affidavit or in any other document. I say so because, it was the respondent who was supposed to initiate a preliminary objection based on a wrong citation of the law.

I now move to the second issue whether the applicant advanced sufficient cause to warrant the extension of time for the application for leave to appeal to the Court of Appeal. The explanations and reasons advanced by Mr. **Egidi S. M. Mkoba**, the learned advocate for the applicant, on the issue of extension of time are as follow. The applicant filed the notice of appeal in due time along with the request for a copy of Judgement and decree that he wanted for appeal. The Judgement and decree that he wanted to appeal was pronounced on 17.2.2020. The notice for appeal was lodged on 6.3.2020. On 4. 12. 2020, the applicant filed an application that was not found to be well-founded for reasons of improper citation.

The respondent stated in response that the applicant sought an extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania. The applicant must show good cause for his delay. On its part, the Court is allowed to exercise judicial discretion as provided for under **section 93 of the Civil Procedure Code, Cap 33 R. E. 2019:**

"Where any period is fixed or granted by the Court for the doing of any act prescribed as allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

The applicant must provide sufficient reasons for his delay in filing of the application for extension of time which was also cited in the case of **Michael Lessani Kweka Versus John Eliafye** 1997 TLR 152 (CA), which declares, among other things;

"The court had power to grant an extension of time if sufficient cause had been shown for doing so."

It was further argued that the applicant failed to demonstrate sufficient cause for his delay in filing the application for leave. He added that the applicant was negligent in obtaining copies of the judgement and decree. The court was referred to the case of **John Cornel Versus A. Grevo (T) Ltd** (High Court) Civil Case No. 70 of 1998 wherein Kalegeya, J (as he then was) stated that:

"..... the law of limitation of actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web...."

In rejoinder the applicant's learned advocate Mr. Egidi S. M. Mkoba, stated that, the applicant has demonstrated the reason for the delay, and argued that justice would not have been done better unless the application is granted rather than rejected.

I examined the submissions of the parties. I discovered that, the notice of appeal was lodged on 6.3.2020, and the judgement and decree were delivered on 17.2.2020. On 4.12.2020 the applicant filed **Misc. Land application No. 702 of 2020** (Arising from Land Appeal No. 38 of 2017). The same was struck out on 27.1.2021 for citing a wrong provision of the law. The court stated and I quote:

"The application is hereby struck out for having cited the wrong provision of the law. The applicant is seeking for the extension of time to apply for leave to appeal to the Court of Appeal, the proper law would have been the appellate Jurisdiction Act, Cap 141 R.E. 2019...."

I am of the view that the applicant has done nothing apart from bare assertion that he was making follow up for copies of judgement and proceedings from the High Court (Land Division), Land Appeal No. 38 of 2017. The applicant alleged that he was supplied with a copy of the judgement on 12.10.2020, while the judgement was delivered on 17.2.2020. On 4.12.2020 the applicant filed **Misc. Land application No. 702 of 2020** (Arising from Land Appeal No. 38 of 2017 (High Court Land Division)). The same was struck out on 27.1.2021 for citing a wrong provision of the law. It is noteworthy that the application was filed after a delay of 9 months and 17 days. There was no account given for each day of delay. It is not clear what the applicant was doing from the date the judgment was read up to the date Miscellaneous Land application No. 702 of 2020 (Arising from Land Appeal No. 38 of 2017 (Land Division) Dar-es-salaam was instituted. As described in the case of **Blue line Enterprises Ltd Versus East African Development Bank** Misc. Civil Course No. 135/95, Katiti J held that:

"It is trite law that extension of time must be for the sufficient cause and that extension of time cannot be claimed as of rights, that the power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient

cause being shown which has to be objectively asserted by Court."

However, the Applicant stated that, he obtained copies of the judgment on 12.10.2020 and filed the application on 4.12.2020, after a lapse of 54-days. As the time for the appeal was over, the applicant should have accounted for what he was doing all the time. As stated in the case of **Bushiri Hassan Versus Latifa Lukio Mashayo** Civil Appeal No.3 of 2007 (Unreported) where the Court had this to say:

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps has to be taken."


It was expected that the applicant will make an account of each day he made a follow up at the High Court (Land Division) for copies of judgement and proceedings from Land Appeal No. 38 of 2017. In the case of **Al Imran Investment Ltd Versus Partric Tanzania and Another**, it was stated that;

"The applicant ought to explain the delay of every day passes beyond the prescribed periods for the limitation."

Similarly, there is no any account of each day of delay in term of making follow up for the said copies of proceedings and judgment from the High Court Land Division Dar es Salaam in Land Appeal No. 38 of 2017.

In the results, there is no sufficient cause shown by the applicant. The application is dismissed with costs. It is so ordered.

DATED and **DELIVERED** in **DAR-ES-SALAAM**, this 19th day of **April** 2021.


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U. E. MADEHA
JUDGE
19/4/2021

**MAHAKAMA KUU YA TANZANIA
(DIVISHENI YA ARDHI)**

MAOMBI MADOGO YA ARDHI NA. 59 YA 2021

(Yanatokana na Rufaa ya ardhi Na. 38 ya 2017 Mahakama Kuu Divisheni ya Ardhi)

HERY ABDALLAH.....MWOMBAJI

DHIDI YA

SALIMINA ALLY.....MJIBU MAOMBI

MUHTASARI WA MAAMUZI

1. Maelezo Mafupi ya Shauri

HERY ABDALLAH ameleta maombi ya kuongezewa muda ili aweze kukata rufaa Mahakama ya Rufani dhidi ya maamuzi ya shauri la Rufaa ya Ardhi Na. 38 ya 2017 katika Mahakama Kuu Divisheni ya Ardhi.

2. Maamuzi

Baada ya mahakama hii kusikiliza pande zote mbili, mahakama imetupilia mbali maombi haya ya mwombaji na gharama.

3. Sababu za Uamuzi

- i. Mwombaji ameshindwa kuonyesha sababu ya kuchelewa kukata rufaa Zaidi ya kueleza alikuwa anafuatilia nakala ya hukumu na mwenendo wa Shauri la Rufaa ya Ardhi Na. 38 ya 2017.
- ii. Mwombaji ameshindwa kuleta Ushahidi kwa kila siku aliyochelewa kufungua Maombi Madogo ya Shauri la Ardhi Na. 702 ya 2020 kwani alifungua tarehe 4/12/2020 wakati Hukumu ya Shauri ya Rufaa ya Ardhi Na. 38 ya 2017 ilitolewa tarehe 17/2/2020.

**Muhtasari huu umetolewa na,
Ofisi ya Naibu Msajili Mfawidhi wa Mahakama Kuu Divisheni ya
Ardhi.**

Angalizo

- 1. Lengo la Muhtasari huu ni kusaidia kuelezea maamuzi ya Mahakama katika lugha rahisi ya Kiswahili.*
- 2. Muhtasari huu ni kwa ajili ya taarifa tu na hivyo hauna nguvu ya kisheria.*
- 3. Uamuzi kamili wenye nguvu ya kisheria unapatikana katika tovuti ;*
<https://tanzlii.orq/tz/judgments>