

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 437 OF 2020**

*(Originating from the decision of this Court in Misc. 880 of 2016 (Hon. De-Mello, J))*

**LUCIA ELIAS MHAGAMA.....APPLICANT**

**VERSUS**

**GONZALUBA GANUS..... RESPONDENT**

**RULING**

**I. MAIGE, J**

In terms of section 11(1) of **the Appellate Jurisdiction Act, this Court** has been moved, by an *omnibus* application, for extension of time to lodge an appeal and a related application for leave to appeal against the decision of this Court as per Madame Judge De-Mello in Misc. Land Application No. 880 of 2016.

The applicant deposed an affidavit to support her application. On his part, the respondent despite being duly served, did not file an affidavit in opposition. Neither did he enter appearance in Court on the date of hearing. Therefore, the matter proceeded against him *ex parte*.

In her oral submissions, the applicant being a layperson had nothing substantial to address the Court on the merit or otherwise of the application. She just adopted the facts in the affidavit and urged the Court to grant the application.

The decision sought to be appealed against should extension of time be granted, was pronounced on 21<sup>st</sup> March, 2019. The instant application was filed on 12<sup>th</sup> August 2019. There is an interval of more than a year. The applicant's account for the delay in the affidavit is that she was prosecuting another proceeding. It is irrefutable that, soon after the dismissal of her application, the applicant lodged Misc. Land Application No. 328 of 2019. For reason of some technical defects, the application was withdrawn, on 22<sup>nd</sup> July 2020 with a liberty to refile.

I have carefully read the unopposed facts in the affidavit and the documents therein attached. As I said above, the applicant's justification for an extension of time is based on prosecution of another proceedings before this Court. In effect, she is saying that, the delay to pursue the appeal was not an actual delay but a technical delay in that, since the termination of the decision under discussion, she has been in court corridor fighting for her

right. As I understand the principle in **KIWENGA STRAND HOTEL ROYAL INSURANCE TANZANIA LIMITED VS. KIWENGA STRAND HOTEL LIMITED** CIVIL APPLICATION NO. 111 of 2009 this Court enjoys **discretion** to extend time on ground of prosecution of other proceedings if the same was made in the absence of *malifide* and in due diligence.

The factual deposition in the affidavit suggests in my view that, the applicant's prosecution of Misc. Land Application No. 328 of 2019 was *bonafide*. The facts having not been controverted by way of a counter affidavit, I have no reason why I should not believe it. I therefore take it that, the prosecution of the said proceeding was *bonafide*.

The facts in the affidavit also suggest that the applicant did not, in addressing the defects, act negligently. As I said above, the proceedings in Misc. Land Application No. 328 of 2019 was terminated on 22<sup>nd</sup> July 2020. On 12<sup>th</sup> August 2020, being hardly 20 days thereafter, the applicant initiated the instant application. The time taken in my view cannot be said to be unreasonable as to blame the applicant of being negligent.

In my opinion therefore, this application is not without merit. It is thus granted without an order as to costs. The notice of appeal much as it is the application for leave to appeal to the Court of Appeal should be filed within 30 days from the date hereof.

It is so ordered.



I. Maige

**JUDGE**

**30/04/2021**

Ruling delivered in the presence of the applicant in person and in the absence of the respondent this 30<sup>th</sup> day of April 2021.



I. Maige

**JUDGE**

**30/04/2021**