

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

MISC. LAND CASE APPLICATION NO. 263 OF 2019

JUMA A. MAFTAHA APPLICANT

VERSUS

PROSPER MASSAWE 1ST RESPONDENT

RAJABU NGEJE 2ND RESPONDENT

(Arising from the decision of the High Court Land Division in Land
Appeal No. 61 of 2017)

RULING

Date of Last Order: 19/02/2021 &
Date of Ruling: 23/04/2021

S.M KALUNDE, J:-

The applicant **JUMA A. MAFTAHA**, allegedly a layman in law, is seeking for extension of time to file Notice of Appeal out of time against the decision of this Court in **Land Appeal No.61 of 2017** delivered on 20th July, 2018. His application is preferred under section **11 (1)** of the **Appellate Jurisdiction Act, Cap. 141 R.E 2002** and is being supported by an affidavit of the applicant.

According to the affidavit and annexures, the decision of the High Court was delivered on 20th July, 2018. As soon as the Judgment was delivered, the Applicant filed the application for leave to appeal to the Court of Appeal via **Misc. Civil Application No. 532 of 2018**. On 12th April, 2019 the applicant was granted with leave to appeal to the Court of Appeal. Upon being granted with leave to Appeal, the applicant

approached a lawyer to assist in the preparation of the appeal, however, he was informed of the necessity and need obtain a Notice of Appeal to accompany the appeal. Being a layman, he had no idea of this requirement, and since the statutory time to file the said notice had expired, he preferred the present application.

In response, the respondents filed a joint counter affidavit objecting all the allegations in the application and the prayer that the application be dismissed for lack of merit.

Leave of the Court was granted for the applicant to be argued by way of written submissions and submissions were duly filed in compliance with Court orders. The applicant submissions were drawn and filed by the applicant in person whilst the 1st and 2nd Respondents submissions were drawn gratis by **Legal and Human Rights Centre**.

In his submission, the Applicant argued that delay in complying with the requirements of rule 83 (1) and (2) of Court of Appeal Rules, 2009 was occasioned with his lack of knowledge on the procedure required to be complied with in filing an appeal. he urged the Court to extend time for him to be able to comply with the requirement of 83 (1) and (2) of Court of Appeal Rules. To support his argument he cited the case of **Mombrama Gold Corporation Ltd vs. Minister of Energy and Attorney General and East Africa Gold Mines as Intervenor** (1998) TLR 425.

In reply the respondents were of the opinion that, the application should be dismissed for lack of merit. They argued that, the reasons for the delay were baseless since ignorant of law has never been an excuse or defence against any proceeding. To support the argument they cited the

case of **Hadija Adam vs. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported); **Bariki Israel vs. The Republic**, Criminal Appl No. 4 of 2011 and **Charles Salugi vs. The Republic**, Criminal Appl No. 3 of 2011.

Upon going through the pleadings and submissions filed for and against the application, the issue for my determination is whether the present application is merited.

The position of the law is that an individual aggrieved from the decision of the High Court in exercise of its appellate jurisdiction must file a Notice of Intention to Appeal within 30 days of the issuance of the decision. In addition to that, the law requires an applicant to obtain leave of the High Court. Further to that the law provides an avenue for extension of time where the 30 days' time limit allowed by law have expired. Section 11 (1) of **Cap. 141**, to which this application is based allows for extension of time for giving a notice of intention to appeal. The section reads:

"11-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired." [Emphasis is added]

The above section allows this Court to extend time for an applicant to give a notice of intention to appeal from the decision of the High Court. In applications of this nature, all the applicant is required to do is to show that he there were "**sufficient reasons**" or "**good cause**" for the

failure to comply with the requirements of the law with the prescribed time limit. Although "sufficient reasons" or "good cause" have not been defined courts take consideration of various factors in determining whether there are "sufficient reasons" or "good cause". In **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported) the factors to be looked at in considering good cause were listed to include:

1. *The applicant must account for all the period of delay.*
2. *The delay should not be inordinate.*
3. *The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
4. *If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In the present case, the decision sought to be challenged on appeal to the court of Appeal was delivered on 20th July, 2018. Unaware of the requirement to file a Notice of Intention to Appeal, twenty eight (28) days later, on 17th August, 2018 the applicant filed an application for leave to appeal to the Court of Appeal. The application was prosecuted and eventually granted on 12th April, 2019. As he prepared his appeal the applicant, a lay person, realized that he had not complied with the requirement to file for a Notice of Intention to Appeal, then he rushed to this Court for an extension of time so that he can comply with the said

requirement of the law. The present application was filed on 13th May, 2019, a month after leave was granted.

It is worth noting that, by the time the applicant filed the application for he was well within the prescribed period to file a Notice of Intention to Appeal, only that, being a lay person, he was not aware of that requirement. As soon as he became aware of the requirement he immediately filed the present application. In my view he acted promptly, and I must say, given that he is a lay person, he has been diligent in the prosecution of his case.

The law is that when an applicant shows that he acted promptly and diligently in the prosecution of his case, extension of time should be granted. That position was stated in **Michael Lessani Kweka vs. John Eliafye** [1997] TLR 152; **Royal Insurance Tanzania Limited vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 and **Vodacom Foundation vs. Commissioner General (TRA)**, Civil Application No. 107/ 20 of 2017 (CAT-DSM) (unreported).

In **Michael Lessani Kweka** (supra) the Court held that:

"Although generally speaking a plea of inadvertence is not sufficient, nevertheless I think that extension of time may be granted upon such plea in certain cases, for example, where the party putting forward such plea is shown to have acted reasonably diligently to discover the omission and upon such discovery, he acted promptly to seek remedy for it "
[Emphasis is added]

I have also noted that, throughout the proceedings before the ward tribunal, and in the District Land and Housing Tribunal, and all through **Land Appeal No. 61 of 2017** and **Misc. Land Application No. 532**

of 2018 at the High Court, the applicant was not being represented by an advocate. He acted on his own and in my view, he acted so diligently and has shown resilience in knocking to the doors of justice in search of what he believes to be just. He should not be denied his pursuit of justice by technical grounds. A demonstration of such diligence and resilience in search of one's right should not be denied for some technical grounds. Whilst I am aware that ignorant of law has never constitute reason for extending time, I do not think the present case a clear case of ignorance of law. I also do not subscribe to a notion that that rule should be applied blindly. In any case a strict application to that rule would not serve the interests of justice.

I hold a view that in determining applications of this nature particular regards to each individual circumstances should be taken into account. I am supported in this view by the decision in **Ramadhani Nyoni vs. M/s Haule and Company Advocates** [1996] T.L.R 72 where it was held that: -

*"While dwelling on this matter I understand that procedural rules are intended to serve as the hand maiden of justice and not to defeat or frustrate it, and it can be denied that the strict application of the rule in question may in certain cases amount to legal formalisation. **In the light of the foregoing I am of the settled view that this Court like any other court worthy of the name has the duty to look into the matter sympathetically with a broad mind and most realistic approach. In order to do justice to the case, especially in a case where a layman, unaware of the process of the machinery of justice, tries to get remedy procedural rules should not be used to defeat justice.**" [Emphasis is added]*

I am also aware that a bonafide mistake cannot be a ground to deny one right to be heard. In **Githere vs Kimungu** (1985) 1 EA 101, CAK; the court held that

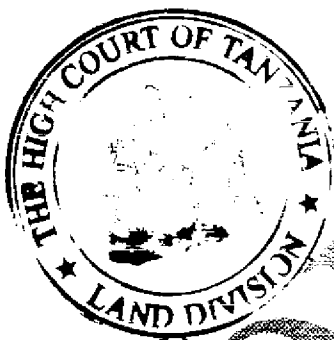
*"... where there has been a bonafide mistake and no damage has been done to the other side which cannot be sufficiently compensated by costs, **the court should lean towards exercising its discretion in such a way that no party is shut from being heard; accordingly, a procedural error, or even a blunder on point of law, on the part of an advocate (including that of his clerk), such as a failure to take prescribed procedural steps or take them in due time, should be taken with a humane approach and not without sympathy for the parties, and, in a paper case, such mistakes may be a ground to justify the court in exercising its discretion to rectify the mistakes if the interests of justice so dictate, because, the door of justice is not closed merely because a mistake has been made by a person of experience who ought to have known better, and there is nothing in the nature of such a mistake to exclude it from being a proper ground for putting things right in the interests of justice and without damage to the other side. But whether the matter shall be so treated must depend upon the facts of each individual case.** That the relation of rules to the circumstances to the administration of justice is intended to be that of a handmaid rather than a mistress, and that the court should not be so bound and tied by the rules, which are intended as general rules of procedure, as to be compelled to do that which will cause injuries in particular case, and this is a principle which a court must remember when judicially exercising its discretionary power."* [Emphasis is added]

Mindful of the above position of the law, I find that the delay in the present was not inordinate and that the applicant has shown that there was diligence, and not apathy, negligence or sloppiness on his part. For the foregoing reasons I make a finding that he had demonstrated good cause for this Court to exercise its discretion under Section 11 (1) of The Appellate Jurisdiction Act to grant the application.

For the foregoing reasons, the application is granted without costs. The Applicant is required to file a Notice of Intention to Appeal within 21 days from the date of obtaining certified copied of this decision.

It is so ordered.

DATED at DAR ES SALAAM this 23rd day of APRIL, 2021.




S.M. KALUNDE

JUDGE