

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR-ES-SALAAM

MISC. LAND APPLICATION NO. 156 OF 2021

(C/O Land case No. 175 of 2019)

ELIAS EDWARD MAYUNGA APPLICANT

VERSUS

ERNEST MASSAE 1st RESPONDENT

MWANTUMU ALLY 2nd RESPONDENT

RULING

Date: 24/06/2021 & 01/07/2021

Nkwabi, J.:

The applicant filed this application praying for this court to extend the time within which the applicant could apply for leave to appeal to the Court of Appeal against the judgment and decree of the High Court of Tanzania (Land Division) at Dar-es-Salaam (Hon. Maghimbi, J.) in Land Appeal No. 175 of 2019, delivered on 16 December 2020. The applicant prayed for costs as well as any other reliefs the court may deem fit and just to grant.



The chamber summons was made under section 14(1) of the Law of Limitation Act Cap 89 R.E. 2019. The application is supported by the affidavit sworn by Daniel B. Welwel, learned counsel for the applicant.

In this application, the applicant is of the view that this court blesses it for the following ground which on his side seems to be established. That, firstly, he has accounted for each day of the delay in that there was delay to be supplied with the copies of judgment, decree and proceedings of the court. They were supplied with the necessary documents after the prescribed time for lodging the application for leave had lapsed. Secondly, the circumstance in this application is: "fit for this court to allow the application by its discretion for the delay has been explained, the application was brought promptly and the applicant exhibited diligence" citing **Civil Application No. 299/16 of 2016 AG v Osterbay Villas Ltd & Another** (CAT) (Unreported) at page 9. Thirdly, he has demonstrated some illegality in the decision of the High Court and referred me to the Civil Application no. 299/16/2016 (supra) at page 11 to 12.



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The application was strongly protested by the respondent through his advocate one Lusajo Wille, learned advocate, who filed a counter-affidavit sworn by himself.

The application was argued by way of oral submissions. Mr. Daniel Welwel, learned advocate, appeared for the applicant while Mr. Lusajo Wille and Ole Mkurago, learned advocates, appeared for the respondent. Both learned advocates forcefully sympathized with their respective clients. Mr. Welwel insisted that the application be granted while Mr. Lusajo urged the same be dismissed. I am grateful to the counsel of both parties for their well-researched submissions.

I am of the view that, in this application, the pertinent issues that need this court's determination are:

1. Whether the cited section moving this court is proper.
2. Whether the applicant has accounted for every day of the delay or at least acted promptly and diligently.



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3. Whether the applicant has managed to establish that there is illegality in the decision of the High Court he intends to challenge in the Court of Appeal.
4. Whether the applicant has assigned good cause for this court to grant extension of time within which to file the notice of appeal.

It is a practice to start dealing with the issue that has a nature of law. This is not other than whether the cited section moving this court is proper. Which is the first issue on the issues I have listed above.

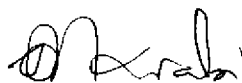
On this issue, Mr. Lusajo argued that even the section cited is not proper one. He attributed it to sheer negligence. He argued, in terms of section 52(2) of the Land Disputes Courts Act Cap. 216 RE 2019 its use/application of the Law of Limitation Act prohibited in application of this nature, it will be used only where this court were exercising its original jurisdiction. He argued the proper section was Section 11(1) of the Appellate Jurisdiction Act Cap 141 RE 2019.


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The argument was challenged by Mr. Welwel who was of the view that section 52(2) of the Land Disputes Courts Act has been quoted out of context. He stated, leave to appeal is in the original jurisdiction of the High Court because in terms of Rule 45 of the Court of Appeal Rules 2009, leave to appeal is in the exclusive jurisdiction of the High Court or Court of Appeal. The Law of Limitation apply in the High Court and not in the Court of Appeal. In the Court of Appeal, limitation is governed by the Appellate Jurisdiction Act and the Court of Appeal Rules.

In the alternative, Mr. Welwel indicates that he was taken by surprise as no notice was given to him in advance in nature of a notice of preliminary objection. He prayed the argument be disregarded in the interest of justice

I have gone the submission and the relevant laws on this matter subject of contention. I am of the firm view that the court is not properly moved as not only provision but also the law was wrongly cited. Had, the counsel for the applicant being honest, he would have at least asked the court to invoke the overriding objective principle to allow him to amend it and the


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matter proceed with hearing. For him to insist that the law and section was proper was maybe unintentional misleading the court.

As to the counsel's claim that he was taken by surprise, if he were not prepared, he ought to have stated as such and asked for time to prepare.

I will not proceed to determine the rest of issues which it will be like determining the application on its merits. The circumstances in this application therefore implores this court to strike out the application for ends of justice to be served. The respondents to have their costs.

It is so ordered.

Dated at Dar-es-Salaam this 1st day of July, 2021.



J. F. Nkwabi, J.

Court: Ruling delivered in chambers this 1st day of July 2021 in the presence of Mr. Ole Mukulago, learned counsel holding brief for Mr. Daniel Welwel learned advocate for the applicant and in the presence of Mr. Ole Mukulago, learned counsel for the respondent and the respondent both present in person.



J.F. Nkwabi, J.

