

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

MISC LAND APPLICATION NO. 265 OF 2020

*(From the decision of the High Court of Tanzania (Land Division) at Dar es salaam in
Land Appeal No. 26 of 2015 dated on 20/04/2016 by Hon. Nchimbi, J*

HAMISI HASSAN MKALAKALA (*Administrator of the Estate of Late
SAID SELEMAN MKALAKALA*).....**APPLICANT**

VERSUS

PAULO MUSHI.....**RESPONDENT**

RULING.

S.M. MAGHIMBI, J:

The applicant is moving the court for an order for extension of time within which the Applicant may file before this Honorable Court the application for leave to appeal in the Court of Appeal of Tanzania against of the judgment of this Honourable Court in Land Appeal No. 26 of 2015 dated 20/04/2016 (by Hon. Nchimbi, J), the applicant is also seeking an order for extension of time within which he may file a Notice of appeal against the decision in this court in the same Land Appeal No. 26 of 2015. The applicant also sought for orders that costs of this application be provided for. The application was lodged under the provisions of Section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 and section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 and was preferred by way of Chamber Summons supported by an affidavit of Hamisi Hassan Mkalakala who is

the administrator of the Estate of the late Said Selemani Mkalakala dated 12/05/2020.

On his part, the respondent, duly represented by Mr. Lusajo Willy, learned advocate, opposed the application through a counter affidavit deponed by the respondent and dated 29th July, 2020. The application was disposed by way of written submissions. I have gone through the submissions of both parties and with much appreciation, I will not reproduce them, instead, I will take them on board in constructing the ruling.

The applicant's main reason for the delay are burdened on the previous administrator of the estate of the late Saidi Selemani Mkalakala. It is on record that it is the former administrator Ally Mohamed Marjeb who initiated the land application before Temeke District Land and Housing Tribunal("the Tribunal"). It is the same former administrator who filed Land Appeal No. 26 of 2015. Again the appeal was unsuccessful and it is the same administrator who initiated the matter at the Court of Appeal. Now the applicant wants the court to believe that the delay was caused by the former Administrator mentioned in paragraph 3 above not informing the heirs of the position of the appeal before the Court of Appeal. Mr. Willy's argument is that the act of the former administrator is binding on the current administrator and that there are no any stated action stated to be taken against the former administrator. I am in agreement with this line of argument. The act of the former administrator are binding on the succeeding administrator otherwise we will have endless litigations to the detriment of the respondent. There is also no evidence adduced by affidavit that all the heirs are against the actions of the former

administrator or are even in support of this administrator for that matter. What if the applicant loses this matter and another person applies for his revocation and come and disown these actions of this current administrator, we go back to the same predicament, endless litigations.

Even if by assumption (something which is not confirmed by the court) we were to say that the former administrator acted maliciously by admitting that he had no intention to pursue the appeal. We will still have to look at the conduct of the appellant from the time they gained knowledge of the matter. This is contained on para 6 of the affidavit in support of the Chamber summons. In the para 6 the applicant deposed that:

"That from facts of paragraph 5 above, the former administrator with ill motive deceit the Court of Appeal of Tanzania by asserting that the heirs affirmed in affidavit that they had no aimed at continuing with the case which he filed before the Honorable Court of Appeal of Tanzania. After discover the deceits of the former administrator the heirs applied for revocation the administrators as a result the Honorable Temeke Primary Court revoked him and on 9th January, 2019, I was appointed together with on MOHAMED BUSHIRI SAIDI to act as administrators. "ANNEXTURE-4" (Bolding is mine)."

If the re-appointment of the applicant as administrator was issued by the Court on 09/01/2019, it means the application was done at least sometimes in 2018. The reason for the application of revocation as deposed on para 6 of the affidavit is after discovering what was termed as "deceit" of the former administrator. It is therefore safe to conclude,


which I hereby so do, that by the year 2018 the applicant had knowledge that the notice of appeal was struck out at the court of appeal at their own instance. Whether or not the withdrawal was by family consent not being the issue at this point, the issue is that the applicant had knowledge that there was no longer an appeal pending at the Court of Appeal.

At this point, the main question remains whether the applicant has adduced sufficient reasons for the delay to lodge the application between at least January 2019 when he was appointed the new administrator to the 21/05/2020 when the current application was lodged.

This period of more than one year was reckoned by the applicant on para 7 of the affidavit, that he was not familiar with procedure of the High Court basically on the issue of appeal, and on 21/01/2020 he requested the assistance of the Advocate but on 19th February, 2019 the Advocate denied to assist us at all. There was also another story of a co-administrator losing interest in involving himself in matter of the estate of deceased. For me all these stories do not add to form sufficient cause for the delay of almost two years from the time the applicant had knowledge of the striking out of the notice of appeal to the time he lodged the current application. The applicant also tried to raise the issue of illegality of the decision of the Tribunal owing to the fact the assessors were not directed to submit their opinion, this reason should not detain me much because first, on page 3 of her judgment the tribunal concurred with the opinion of the wise assessors before it made its verdict. Furthermore, the issue was raised at the stage of submissions while it is trite law that submissions are not evidence and an issue had to be raised in the affidavit of the applicant.

All the above said and done, it my conclusive finding that the applicant has failed to adduce sufficient reasons for the delay in filing the notice of appeal. This application is consequently dismissed. I have noted that at all times the applicant has been seeking legal assistance not from private advocates. For that reason, I make no order as to costs.

Dated at Dar-es-salaam this 14th day of July, 2021.



S.M. MAGHIMBI.
JUDGE.

