

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

MISC. LAND APPLICATION NO. 508 OF 2018

RASHID MAKWAMBA AND 126 OTHERS.....APPLICANT
VERSUS
KILOMBERO SUGAR COMPANY (ILLOVO).....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT
MINISTER FOR FINANCE.....3RD RESPONDENT

Last order: 24/05/2021
Ruling date: 9/7/2021

R U L I N G

MANGO, J.

The application at hand is for extension of time to lodge a notice of appeal to the Court of Appeal of Tanzania and file an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Case No. 15 of 2003.

The Application is by way of Chamber Summons made under Section 11 of the Appellate Jurisdictions Act, [Cap. 141 R. E. 2002], and Section 47(1) of the Land Disputes Courts Act, [Cap. 216 R.E 2002] supported by an Affidavit sworn by Rashid Makwamba.

The Application was argued by way of Written Submission. The Applicants had services of Legal and Human Right Centre, while the 1st Respondent had services of Dastan Kaijage, Learned Advocate. The 2nd and 3rd respondent have not filed their submission(s).

According to the Applicant's Affidavit and submission, the reasons that contributed to the delay in filing Notice of Appeal and an Application for leave include struck out of the Notice of Appeal which was filed on time to the Court of Appeal, sickness of their Advocate, the late Josefu Mwakajinga, and withdrawal and struck out of a number of Applications that were filed by the Applicant seeking extension of time to file a Notice of Appeal and apply for leave.

The said reasons are also reflected in the 1st Respondent's submission as they appear in the first page of his submission. The relevant paragraph reads;

"dissatisfied by the decision of the High Court, the Applicants who lost the case filed a notice of intention of Appeal to Court of Appeal, but the Court of Appeal of Tanzania struck out the Notice of Appeal on 31st May, 2006 for want of leave to Appeal. Since then the Applicants through their Attorney have been lodging Applications for extension of time within which to file a fresh Notice of Appeal and to lodge an Application for leave to Appeal out of time without success since the said Application have been either struck out by the Court or withdrawn by the Applicants following preliminary Objections raised by counsel for the Respondents."

Such admission by the 1st Respondent that the Applicants have always been in court corridors knocking the doors of justice establishes that, the Applicants have never been negligent in pursuing their Appeal. Their failure to Appeal on time was caused by technicalities that were beyond their control.

It is trite law that in determining an Application for extension of time, the Court need to consider whether the Applicant has established good grounds for the delay of each day. In doing so the court need to consider circumstances of each case independently.

I agree with the counsel for the Respondent that there seems to be elements of negligence on the part of the Applicants' advocate. However, the arguments that the Applicants have not established a sufficient cause for the delay is not supported by court record and even the contents of the first Respondent's submission. Court record and submissions made by both parties establishes that Applicants have been constantly pursuing the intended appeal though they could not succeed for technical reasons. I find the applicants delay to be more of a technical delay than actual delay. The call to distinguish between actual and technical delay was made in the case of **Fortunatus Masha Versus William Shija and Another** [1997] TLR 154 in which the court held;

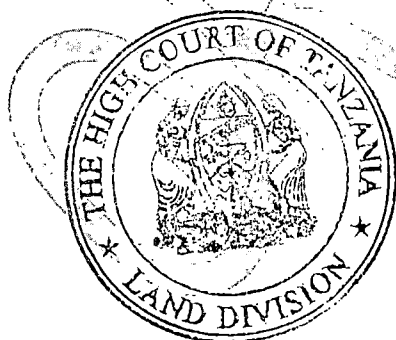
"A distinction should be drawn between cases involving real and actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but

had been found to be incompetent for one reason or another reason and a fresh appeal had to be instituted..."

The applicants were compelled to apply for extension of time following struck out of their notice of appeal which was lodged before the Court of Appeal. After the struck out of the notice appeal, the applicants' road to approach the Court of Appeal has never been smooth as their subsequent applications for extension of time ended up being struck out or withdrawn due to technical reasons which were beyond the applicants control. There is nowhere in court record that suggest the Applicants delay was caused by inaction or negligence on the part of the Applicants.

For that reason, this Court do hereby grant the Applicants extension of time to file Notice of Appeal and an Application for Leave within 30 days from the date of extraction of the drawn order.

Costs to follow events.



Z. D. MANGO
JUDGE
09/07/2021