

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

**MISC.LAND APPLICATION No. 53 OF 2021
(Arising from Land Appeal No. 224 of 2016)**

MR. GEOFFREY SHOO.....1ST APPLICANT

MRS. STELLA SHOO2ND APPLICANT

VERSUS

MOHAMED SAID KITUMBI 1ST RESPONDENT

THE EXECUTIVE DIRECTOR

KINONDONI MUNICIPALCOUNCI.....2ND RESPONDENT

MOHAMED SAID KITUMBI (The guardian of

MTUMWAMOHAMED KITUMBI)3RD RESPONDENT

RULING

Date of last order: 29/7/21

Date of Ruling: 30/9/2021

T. N. MWENEGOHA, J.

The applicants, Mr. Geoffrey Shoo and Mrs. Stella Shoo have filed this application under the provision of Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 (Herein after the Act), seeking an extension of time within which to apply for leave to appeal to the Court of Appeal of Tanzania, against the ruling and order Hon. Ndunguru, J. dated 21st June 2019, and any other order the court may deem fit and just to grant. The application is supported by the affidavit of the applicants' advocate one Mwang'enza Mapembe, dated 29th January 2021. Opposing the application, the 2nd respondent through legal officer Jeremiah Odinga, filed the counter affidavit dated 25th Feb, 2021. Also, the

1st and the 3rd respondents through their advocate, Fauzia Mtawajibu Kajoki filed counter affidavit dated 1st March, 2021. The application proceeded by way of written submission. All parties were represented. While the applicants were represented by Mr. Kephass Mayenje, Advocate, the 2nd respondent was represented by Mr. Jeremiah Odinga from the Municipal Solicitor's office. The 1st and 3rd respondents were represented by Juma Nassoro, Advocate.

Supporting the applicant's application Mr. Mayenje prayed that the affidavit of Mwang'enza Mapembe be adopted so as form part of his submission. He submitted that paragraphs 15, 16, 17 and 18 of the applicant's affidavit have explained the reasons for delay of filing the leave to appeal to the Court of Appeal.

That the Applicants has always been in Court prosecuting different applications to fight for their rights however the same were declared incompetent, hence the present application. He continued to submit that there is actual delay and technical delay, and that it is evident that the applicants were not sitting idle but always been in court prosecuting appeal and different incompetent applications. Therefore, that it is a technical delay of which the Applicants are not to be blamed. Mr. Mayenje further submitted that the Misc. Land Appeal No.224 of 2017 was filed in time but it was dismissed for being filed out of time and hence the subsequent applications.

To support his argument, he cited the case of **Fortunatus Masha Vs William Shija and Another [1997] TLR 154**, where the Court of Appeal held that

" A distinction had to be drawn between cases involving

real or 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 or another reason and a fresh appeal had to be instituted.

In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal in these circumstances an extension of time ought to be granted."

He submitted that, the established facts and circumstances in the present application are the same as in the case cited above.

Mr. Mayenje submitted that, as well pleaded in paragraph 23 of the affidavit that the illegality is contained in the Ruling of Hon. Ndunguru, J. where the Court stated that exclusion of time in Section 19 (2) of the Law of Limitation Act, Cap 89 R.E 2019 (Herein after **the Limitation Act**) is not automatic and consequently dismissed the appeal. That the Judge committed a serious legal error which attracts intervention of the Court of Appeal. To support his argument, he cited the case of **Alex Senkoro and Others V. Eliambuya Lyimo (As administrator of the Estate of Fredrick Lyimo, Deceased), Civil Appeal No. 16 of 2017**, unreported (copy attached) where the Court of Appeal at page 11 of the judgment stated that:-

" We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of

the Court in a formal application for extension of time."

He further submitted that the applicant has alleged illegality of the Ruling and therefore a sufficient reason for extending time to file an application for leave to appeal so that the Court of Appeal can put the matter and the record right. To support his argument, he cited the case of **Principal Secretary, Ministry of Defence & National Service V. Devram Valambhia [1992] TLR 185,**

"where the Court of Appeal held that "when the point at issue is one alleging illegality of the decision being challenged, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right.....where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute "sufficient reason" within the meaning of rule 8 of the Rules for extending time."

Mr. Mayenje finalized his submission by submitting that the justice of this matter would best be served if the application is granted because the applicants have advanced sufficient reasons and the respondents will not be prejudiced in the event this application is granted.

In reply, Mr. Nassoro, Advocate for the 1st and the 3rd respondents submitted that, the applicant's application deserves to be dismissed with the costs for the failure to account for each day of delay. That the applicants admit to have delayed, but they did not account for those days they delayed to file the application. Mr. Nassoro submitted that the

decision intended to be appealed was made on 21.6.2019 but the applicants being represented by the advocates' demonstrated negligence, which should not be condoned at the expenses of the Respondents. That at the various miscellaneous applications filed and finally either struck out by the court or withdrawn, are the clear evidence of negligence on the part of applicants. That as per the records the parties are in legal battle in courts since 2005 over 15 years now just because the applicants are filing endless and incompetent applications.

That, the alleged illegality raised as a ground for extension of time, is nothing but a mere error which do not amounts to a good cause in law for extension of time. In the case of **Tanzania Rent a Car V. Peter Kimuhu, Civil Application No. 226/01 of 2017** quoted with Approval in the case of **Iron & Steel Ltd Versus Martin Kumaliya & Others Civil Application No. 282/18 Of 2020** At Page 14, where the CAT ruled that: -

"A difference should be made between an illegality and an error in the decision. While the former amounts to good cause under rule 10 of the Rules, the latter will not."

Mr. Nassoro finalized his submission praying for this court to dismiss this application with costs. In his reply, for the 2nd respondent, Mr. Odinga prayed to adopt the content of the 2nd respondent's counter affidavit for it to form part of his submission.

He submitted that it is unfortunate the applicant's submission in chief has addressed on the illegality of the Ruling and Order of Hon. Ndunguru, J dated 21st of June, 2019 to which they are of the view that the decision

was wrongly reached. That even the number of case of laws cited to support their arguments has to be ignored.

He submitted further that, the applicants are seeking for extension of time to file leave to appeal to the Court of Appeal, but the applicant's affidavit and submission in chief has not elucidated reasons as to why they deserve to be granted with the order they are seeking.

He argued that it is a cardinal principle of the law that, for an application for extension of time to be granted, the applicant is obliged to show good reason/s as to why such delay has happened and to account for each day of delay to support his argument, he cited the case of **Dan O'bambe Iko (By William Dan I Ko' As Administrator of the estate Vs Public Service Social Security Fund and Treasury Registrar, Civil Application No. 182 of 2005, Court of Appeal of Tanzania at Dar es Salaam (Unreported).**

That, due to the fact that, the applicants have not shown in paragraph of their affidavit as to why they delayed to file an application for leave to appeal, therefore, that, this Court is not sufficiently satisfied to grant an extension of time for what the applicant has not adduced in their affidavit. To support his argument, he cited the case of ***Abel Maligisi vs Paul Fungameza, Civil Appeal No, 10 of 2018, High Court of Tanzania at Shinyanga (Unreported).***

He finalized his submission by arguing that, the applicants' application has no merit and therefore, prayed for the same to be struck out with costs. Having gone through the parties submissions the main issue is whether the applicants have adduced sufficient reasons to move this Court to grant

extension of time within which to file leave to appeal to the Court of Appeal.

My analysis of the merits of this application will begin on the 21st June 2019 when Misc. Land Appeal No. 224/2017 was dismissed for being time barred.

According to the applicant's affidavit, after the appeal was dismissed, on the 19th July, 2019 the applicants filed a Notice of Appeal showing the intentions to appeal to the Court of Appeal.

On the 24th June, 2019 the applicants wrote a letter to the registrar requesting to be supplied with the copies of the Ruling and Orders of the dismissed appeal, which they said was ready on the 22nd July, 2019. On the 23rd July, 2019 they filed before this Court an application for leave to appeal to the Court of Appeal, that is Application No. 407 of 2019. On the 24th February, 2020 when the matter came for hearing the presiding judge raised an issue *suo moto* on the competency of the application, upon conceding to the issues raised by the court the application was withdrawn with leave to refile. On the 25th February, 2020 the applicant requested to be supplied with the copy of the court's order, which was ready on the 26th February, 2020. Later on, the applicant's advocate came to realise that an Application No. 407 of 2019 was time barred as he came to realise that he filed it 2days later after the period prescribed by the law. Therefore, he decided to file an Application No. 109 of 2020 seeking two orders, **one**, extension of time to apply for leave to appeal to the Court of Appeal, and, **two**, subject to the grant of the extension of time, the applicant applied for leave to appeal to the Court of Appeal. On the 11th December, 2020 the application was struck out upon a successful preliminary objection that the application was incompetent and defective

for being an omnibus. On the same day of 11th December, 2020, the applicants wrote a letter requesting for the copies of the ruling and orders. The copies were supplied to the applicants on the 26th January, 2021 and on the 1st of February, 2021 this application was filed.

In the case of **Valerie McGovern v. Salim Fakhruddin, Civil Application No. 11 of 2015, CAT, at Tanga** it was held that:

"The law is settled...that no particular reason or reasons have been set out as standard sufficient reasons. What constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case."

My observation is that, the judgment on appeal was delivered on the 21/06/2019 and the copy of the judgment was certified and ready for collection on the 22/07/2019. The Misc. Land Application No. 407 of 2019 was filed on 23/07/2019 which was 32 days after the limitation period, as the provisions Rule 45 (a) of the Court of Appeal Rules R.E 2019 provides that application for leave may be made within thirty days of the decision. Therefore, the delay in filing this application was due to the delay of being supplied with the copies of the ruling and order of the court. After that, the applicant filed an application which was struck out as it was an omnibus application.

I am in agreement with the applicant's advocate Mr. Mayenje in the respect that the applicants were not idle sleeping over their rights but always been in court corridors prosecuting appeal and different incompetent applications caused by the negligence of their advocate. The negligence or mistakes of the advocate cannot be used to punish the

innocent parties, the applicants, in this particular case. It is my findings that, there is a sufficient reason for delay. See the case of **Bahati Musa Hamisi Mtopa Vs Salim Rashid Civil Application No. 112/07 of 2018** where the Court of Appeal of Tanzania cited with approval the case of ***Felix Tumbo Kisima VS. TTC Limited and Another CAT Civil Application No. 1 of 1997 (unreported)***.

"It should be observed that the term "sufficient cause " should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step. In the instant case the respondent had done all that she could, leaving the matter to the hands of her advocate who had been assigned to her on legal aid. In the circumstances, while accepting that there were some elements of negligence by her counsel in the circumstances of the case, we join hand with our learned brother Mfalila J.A in the case cited supra, and hold that the learned counsel's negligence constituted sufficient reason for delaying in lodging the appeal between 1.3.1996 and 24.10.1996."

As the Court of Appeal said in the above cited case, the applicants herein are lay persons, who decided to entrusted their case in the hands of their advocates from Legal Link Attorneys believing that they will act with due diligence and utmost care in handling their case, but the advocates turned out to be negligent and inconsiderate as they ended up filing different

incompetent, or defective applications, even filed application out of time i.e. Misc. Land Appl. No.407 of 2019 this led the parties delaying in pursuing their rights.

Owing to the observations above, the application beforehand is hereby granted, and time is hereby extended for the applicants to file leave to appeal to the Court of Appeal, which shall be filed within 14 days (14) from the date of this ruling. The extended period shall commence after obtaining certified copies of this ruling. Costs shall follow the cause.

It is so ordered.

Dated at Dar es salaam this 30th day of September, 2021.



T. N. MWENEGOHA.
JUDGE

Extracted onday of2021