

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

**MISC LAND APPLICATION NO. 444 OF 2020**

*(Originating from the decision of this Court in Land Appeal No. 43 of 2019)*

**ABDULLY ALLY MAJUTO .....APPLICANT**

**VERSUS**

**PAULO PETRO KIHWILI ..... RESPONDENT**

**RULING**

**MAIGE, J**

In pursuance of section 11(1) of **the Appellate Jurisdiction Act 2002** as amended by **Act No. 2 of 2016**, the applicant is moving the Court for an order granting extension of time to apply for leave to appeal against the decision of this Court in Land Appeal No. 43 of 2019. The justification for the delay to file the intended application is accounted for in the affidavit of the applicant which is opposed by the counter affidavit of the respondent.

At the hearing of the application, the applicant appeared in person and was not represented. Advocate Christopher Mgala represented the respondent. I directed the parties to address me on the substance of the application by way of written submissions. The applicant was to file his written

submissions on or before 29<sup>th</sup> October 2020; respondent on 12<sup>th</sup> November 2020 and rejoinder if any on 19<sup>th</sup> November 2020.

On 27<sup>th</sup> October 2020 being two days before the last date of filing his written submissions, the applicant filed the same. On 10<sup>th</sup> November 2020, the respondent filed his written submissions. However, instead of responding to the applicant's written submissions which was on the record, he just blamed the applicant not for failure to file a written submissions but omission to serve the same on him. It is not suggestive in his submissions that, the respondent and his counsel happened to make any perusal on the court file and find out if the same has been filed. In the circumstance of this case where the applicant was unrepresented layman, the counsel for the respondent being a court officer, was expected to make perusal into the Court file and establish if the same had been filed. He would as well obtain a copy of the written submissions from the Court file and submit his written submissions.

In view of the foregoing therefore, I will proceed determining the application basing on the affidavit, counter affidavit and the applicant's written submissions.

The decision sought to be appealed against to the Court of Appeal was delivered on 3<sup>rd</sup> July 2020. This application has been filed on 22<sup>nd</sup> day of August 2020. It is 19 days after the expiry of 30 days time limit. There is no dispute that, within 30 days from the date of the decision, the applicant lodged a notice of appeal.

The justification for the delay is essentially based on ignorance of the procedure. The applicant believed that the filing of a notice of appeal was sufficient. Layman as he is, he did not know that, leave was a mandatory requirement. The law as it stands is such that not all appeals to the Court of Appeal require leave. There are some decisions of the High Court which are automatically appealable to the Court of Appeal as of right. There are those which require certification on points of law. For a layman like the applicant, it is not uncommon to confuse between the two procedure. Though ignorance of the procedure is generally not a sufficient cause for extension of time, in matters involving complicated procedure and where a layman is involved, the Court may, in its inherent discretion and if justice so requires, consider the same as a good cause for extension of time.

In **Marcel Kichumsa vs. Mary Venant Kabiguni**, Misc. Civil Application No. 163 of 2014 I had an opportunity to deal with an issue which is more or less similar with the instant one. I made the following observations which I still subscribe to:-

*The applicant is a layman. After the pronouncement of the judgment, he promptly wrote a letter for copies of judgment and proceedings. The letter was accompanied with an informal notice of appeal. The applicant was not aware of the requirement that he should procure certification on points of law before preferring an appeal. Since some of the appeals to the Court of Appeal require certification and leave and some are automatic, it is not uncommon for a layman like the applicant to confuse the two procedure. For those reasons therefore, I find that it is in the interest of justice that I extend time within which to file a proper application for certification on points of law.*

It is for the foregoing reasons that, I find this application with merit. It is accordingly granted. Time within which to file an application for leave to appeal to the Court of Appeal is therefore extended for a period of 14 days from the date of extraction of the drawn order. No order as to costs in the circumstance.

It is so ordered.



**I. MAIGE,  
JUDGE,  
12.03.2021.**

Ruling delivered this 12<sup>th</sup> days of March 2021 in the presence of the applicant in person and Mr. Mgalla, learned advocate for the respondent.



**I. MAIGE,  
JUDGE,  
12.03.2021.**

