

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

**MISC. LAND APPLICATION No.230 OF 2021**

**ROSEMARY KATUNZI.....APPLICANT**

**VERSUS**

**OSCAR MHAGAMA.....1<sup>ST</sup> RESPONDENT**

**SEKUNDA MHAGAMA.....2<sup>ND</sup> RESPONDENT**

Date of last Order: 25.10.2021

Date of Ruling: 10.12.2021

**RULING**

**V.L. MAKANI, J**

The applicant ROSEMARY KATUNZI has filed this application seeking for extension of time within which to file a Notice of Appeal in respect of the judgment and decree of this court in Land Appeal No. 78 of 2017 (Hon. Maghimbi, J) dated 19/09/2019.

The application is made under section 11(1) of the Appellate Jurisdiction Act CAP 141 RE 2019 and is supported by the affidavit of the applicant herein. The respondents have filed a joint counter-affidavit to oppose the application.

The application was argued by way of written submissions. Arguing on behalf of the applicant Ms. Nafikile Elly Mwamboma, Advocate stated that the delay in filing the Notice of Appeal is three-folds namely technical delay, real or actual delay and illegalities.

As for the technical delay she said it is demonstrated in paragraph 8 of the applicant's affidavit that after the delivery of the impugned decision on 19/09/2019 honestly and well within the time the applicant filed an application for review which was rejected on 22/12/2020. She said this time from 19/09/2019 to 22/12/2020 is where the technical delay arose. She relied on the cases of **Fortunatus Masha vs. William Shija [1997] TLR 154** and **Elly Peter Sanya vs. Ester Nelson, Civil Appeal No. 151 of 2018 (CAT-Mbeya)** (unreported).

The real or actual delay according to Ms. Mwamboma is demonstrated in paragraphs 9 to 11 of the applicant's affidavit which is the period between 22/12/2020 up to 10/05/2021 when the applicant was looking for an advocate for an advice and a way forward. She admitted that it is a principle that time spent looking for legal

assistance has not been considered as a good cause for delay but she said she was the advocate who has been advising the applicant and there were bundle of documents to be read, drafting and filing the present application. She said the time according to the affidavits is only 10 days which in the case of **Vodacom Tanzania Public Company Limited (formerly Vodacom Tanzania Limited) vs. Commissioner General, TRA, Civil Application No. 101/20 of 2021** was found to be reasonable.

Ms. Mwambona further said illegality as a ground for extension of time is among the factors which may be considered as a good casue in granting extension of time irrespective of whether or not a reasonbale explanation has been given by the applicant. She relied on the case of **Tanzania Breweries Limited vs. Herman Bildad Minja, Civil Application No. 11/18 of 2019 (CAT-DSM)** (unreported). She admitted that for illegality to stand it has to be apparent on the face of record, but she said in the present case illegality was well raised in the notice of motion and the applicant's affidavit (paragraph 12). She said she could not go into the details of the illegality because the law does not permit this as per the case of **Mary Rwabizi t/a Amuga Enterprises vs. National**



**Microfinance PLC, Civil Application No. 378/01 Of 2019 CAT-DSM** (unreported). She said a single justice of appeal has no jurisdiction to determine the matter to ascertain illegality. She cited several cases including **Exim Bank (Tanzania) Limited vs. Johan Harold Christer Abrahamsson & 3 Others, Civil Reference No. 11/2018 (CAT)** (unreported). She said the illegalities as shown in the affidavit are apparent on the face of record. In conclusion she prayed for the application to be granted.

In joint written submissions, Mr. Methodious M. Tarimo on behalf of the respondents submitted that the technical delay that the applicant is alleging is intentional as she opted to file a review instead of appealing within time. He said the applicant admitted this in her affidavit (paragraph 7) saying that she was prosecuted the application for review which ended in 22/12/2020. He said technical delay cannot stand because the time spent in the application for review and the time to find an advocate for preparation was a continuation of delay. He said the cases cited cannot cure the long and negligent delay of almost one year and eight months.

On illegalities Mr. Tarimo said that this reason cannot stand as a good cause because there is no point of illegality apparent on the face of the record; and illegality cannot be an automatic reason for extension of time. Mr. Tarimo relied on the case of **Ngao Godwin Losero vs. Juliua Mwarabu, Civil Application No. 10 of 2015 (CAT-Arusha)**(unreported) and **Chandrakant Jashbhai Patel vs. Republic [2004] TLR 218**. He said the illegalities mentioned in paragraph 12 of the applicant's affidavit are not apparent on the face of the impugned decisions.

Mr. Tarimo said that the delay of one year and eight months is a long time because if the applicant had wanted to file an appeal she would not have opted to go for review of the same decision. He said this is an abuse of the court process by endless litigations.

In rejoinder Ms. Mwamboma reiterated what she stated in the submissions in chief.

It is now an established principle of law that the determination of an application for extension of time is purely on the discretion of the court. However, that discretion must be exercised judicially by

considering whether the applicant has given sufficient reasons to account for the delay. This position was stated by the Court of Appeal of Tanzania in the case of **Yusuf Same & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002 (CAT-DSM)** (unreported), where the Court stated:

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant".*

See also the case of **Benedict Mumelo vs. Bank of Tanzania, Civil Appeal No. 12 of 2002 (CAT-DSM)** (unreported).

In the present application the reasons for the delay according to the affidavit by the applicant and the submissions are technical/actual delays and illegality. As for the technical/actual delays the applicant's arguments are based on the fact that the applicant was prosecuting the application for review. With due respect this is a misconception. The decision of the High Court was appealable, so the option by the



applicant to prosecute an application for review which was unsuccessful cannot warrant extension of time. In any case, if there is a mistake in the procedure and it is termed "*time spent in prosecuting a matter in court...*" there would be no end to litigation. The decision to file an appeal after the unsuccessful review, is in my view, an afterthought. The circumstances in the case of **Fortunatus Masha** (supra) relied upon by Ms. Mwamboma are different. In the cited case, the appeal was filed within time, but it had problems and a fresh appeal had to be instituted and extension of time was thus granted. In the present case the applicant did not file an appeal within time, she apparently filed an application for review which is a totally different application and after failing she has now decided to take the appeal route. The alleged technical delay cannot therefore stand.

The actual delay revolves around time taken when the applicant was looking for legal assistance. The applicant's affidavit indicate that from 10/05/2021 to 19/05/2021 (only 10 days) was the period spent by the Counsel to go through documents and prepare the present application. But paragraph 9 of the affidavit shows that in March, 2021 the applicant met with Counsel who agreed take up the matter. However, it is asserted that Counsel left for Tanga on family issues

from the said March, 2021 and then she continued with leave until 04/05/2021 when she came back. Firstly, I wish to point out that Counsel claimed to have filed her affidavit in court, but this is not true as there is nothing on record to that effect. So, the allegations that Counsel has demonstrated delay by filing affidavit in terms of the case of **Mary Rwabizi t/a Amuga Enterprises** (supra) is misleading. Secondly, the reason that Counsel had family issues and then proceeded on leave is a very lame excuse by Counsel and cannot be sufficient cause for the delay. As it appears from the submissions filed, Ms. Mwamboma from the Law Firm known as Neptune Law Attorneys and presumably she is not alone in the firm; in that regard another advocate could have taken up the matter. Even if she was alone then she would have advised the applicant otherwise having known that she would be on leave and for a long time. In view thereof, the so-called actual delay cannot stand as a sufficient reason for the delay and thus the applicant has failed to account for the delay.

The applicant also raised illegality as a sufficient reason for extension of time. Illegality was discussed extensively in the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported) where



the Court of Appeal stated that once it is established that illegality is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time. In the present case the alleged illegalities that have been raised by the applicant in paragraphs 12(a) to 12(e) are not apparent on the face of the record because it would take a long-drawn process to interpret the alleged illegalities on the points of law as raised. There are several issues and facts to be addressed and considering them would mean determining grounds of the intended appeal and this cannot be termed as obvious illegality apparent on the face of record. I am therefore not persuaded that, the illegality in this application constitutes a good cause to warrant extension of time to file notice of appeal.

In view of the above, it is apparent that the applicant has failed to establish sufficient reasons to warrant the court to exercise its discretionary powers to grant extension of time to file notice of appeal. Subsequently, the application is hereby dismissed with costs for want of merit. It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**10/12/2021**

