

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

MISC. LAND APPLICATION NO. 213 OF 2021

(Arising from Land Revision No. 19 Of 2018, High Court Land Division DSM)

BAKARI MWAWA MAGEUZA.....APPLICANT

VERSUS

TUMAINI E. MNYONE.....RESPONDENT

Date of Last Order: 29.09.2021

Date of Ruling: 01/11/2021

RULING

V.L. MAKANI, J

This application is by BAKARI MWAWA MAGEUZA. He is applying for extension of time within which to file an application for certificate on a point of law against the decision of this court (Hon. A.A. Bahati, J) in Land Revision No. 19 of 2018.

The application was made under section 11(1) of the Appellate Jurisdiction Act, CAP 141 RE 2019 and is supported by the affidavit of Patrick David Advocate for the applicant. Mr. Harry A. Mwakalasya, Advocate swore a counter-affidavit on behalf of the respondent.

With leave of the court the application was argued by way of written submissions.

Mr. Patrick David in his submissions said the applicant was dissatisfied with the decision in Land Revision No. 19 of 2018 and immediately he filed an application which was struck out for wrong citation of the provision of the enabling law on 22/01/2021. He said without delay he on 25/01/2021 filed in court a letter requesting for copies of the drawn order and ruling but he did not receive them until 05/05/2021 and after strenuous efforts to follow up. Mr. Patrick David said after obtaining the ruling he immediately filed this application though on the face of the ruling it does not show when it was extracted. He said the delay can be termed as technical delay because the applicant had no control over the registry officers as the ruling was ready for collection on 05/05/2021. He cited the case of **Fortunatus Msha vs. William Shija & Another [1997] TLR 194** where the issue of technical delay was discussed. He also supported his arguments with the cases of **China Friendship Textile Company Limited vs. Charles Kabweza & Others, Civil Application No. 65 of 2015 (CAT-DSM) (unreported)** and **Kalunga & Company Advocates vs.**

National Bank of Commerce Limited [2006] TLR 235 where the Court of Appeal stressed that what is to be considered in granting extension of time is sufficient reasons so that the court may exercise the discretion given under the law and in this matter the court should consider the technical delay which was out of control of the applicant.

In reply, Mr. Mwakalasya said despite the good expressions by the learned advocate the applicant has not shown good cause to warrant discretion of this court to grant extension of time. He said, for instance, **Annexure M3** reflects that the previous application that was struck out was in respect of leave to appeal to the Court of Appeal and not an application for Certificate on a point of law as said. He pointed out a lot of discrepancies in the affidavit and said it was untrustworthy. He pointed out that a document is deemed filed when payment of fees is made. He cited the case of **John Chuwa vs. Anthony Ciza [1992] TLR 233 and Adamson Mkondya & Another vs. Angelika Kilultona Wanga (as administratrix of the Estate of the late Stephen Angelo Rumanyika) (HC-Land Division-DSM)** (unreported).

In rejoinder Mr. Patrick David reiterated the contents of his submissions in chief.

This application is for extension of time and it is a settled principle of the law that an application for extension of time is entirely the discretion of the court and it may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam (unreported))**).

The reasons for delay according to the affidavit by the applicant is that there was a technical delay; and that the delay for the filing of the application should not be blamed on the applicant but by the delay for getting the copies of the ruling and drawn order. However, as pointed out by Mr. Mwakalasya the affidavit has a lot of discrepancies. In fact, there are some statements which are not true. For instance, paragraph 6 of the affidavit states that the ruling was extracted on 05/05/2021, but the ruling is dated 22/01/2021 and the drawn order was extracted on 03/03/2021, so the assertion in the affidavit is not true. There is also an assertion that the letter requesting for the copies of the ruling and drawn order was filed in

court on 25/01/2021 but the said letter is not annexed to the affidavit. There is yet another assertion that is not true, that the initial application which was struck out was in respect of Certificate on a point of law but the said application (Misc. Land Application No. 133 of 2020) was for leave to appeal to the Court of Appeal. The fact that the assertions in the affidavit are false makes the affidavit defective. In the case of **Ignazio Messina vs. Willow Investments SPRL & Another, Civil Application No. 21 of 2001 (CAT-DSM)** it was stated that an affidavit tainted with untruth is no affidavit at all and cannot be relied upon to support an application. In the same vein I say that the affidavit supporting the application have a lot of false assertions hence defective and cannot be relied upon. And without a proper affidavit then the application has no legs to stand on. It is incompetent.

Without prejudice to the above, the technical delay averred by the applicant cannot stand because it is alleged that immediately after the delivery of the ruling the applicant requested for copies of the ruling and drawn order; but the said letter was not annexed to the affidavit. This alone creates doubt as to when the copies were collected to ascertain the technical delay that was alleged. This

reason can therefore be sufficient for the court to exercise its discretionary powers to warrant extension of time.

In that regard, and for the reasons above, the application is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
01/11/2021

