

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 426 OF 2021

*(Made under Order XL (Appeals from Orders) Rule 21 (t) of the Civil Procedure Code
Cap 33 R.E. 20019).*

HUGH OSWARD KASEMBE

DAISY HUGH KASEMBE

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..... **APPLICANTS**

VERSUS

KASSIM NURU MOHAMED KASSIM RESPONDENT

RULING

Date of the last order: 25.10.2021

Date of Ruling: 25.10.2021

A.Z. MGEYEKWA, J

This application is brought under Order XL Rule 21(t) of the Civil Procedure Code, Cap.33 [R.E. 2009]. The applicants prays for leave to refile an appeal which was struck out on 05th July, 2021. A brief

background of this application goes thus, the applicant lodged an appeal before this Court in respect to Land Appeal No. 61 of 2019, whereby the appeal was struck out on 15th July, 2021 for involving a wrong party. Then, the applicant filed the instant application before this court seeking leave to refile an appeal.

When the matter was called for hearing on 25th October, 2021, the applicant enjoyed the legal representation of Mr. Hashim Mtanga, learned Advocate, whereas the respondent was represented by Mr. Yuda Tadei Paul, learned Advocate.

The applicant was the first to kick the ball rolling, The applicant contended that there was a preliminary objection concerning the Land Appeal No. 61 of 2019 filed by Sadrudia Punja Ratans on 21st September, 2021. He added that later on the research was done and discovered that the disputed Plots No. 208 Block and No. 44 were the property of the widow to Punja Rotans (1st applicant in the previous Application) and not Sadrudin Punja Ratans and one Kassim Mohamed was a representative in Land Application No.214 Of 2007. He further submitted that currently, there are people living in the disputed house at Mwananyamala hence requires this court to give order for eviction from the disputed land.

In response, the learned Advocate for the respondent contended that the learned counsel for the applicant has misdirected himself in submitting his grounds as if this court is determining his ground of appeal, instead of establishing good cause as to why this court should be granted time to refile his appeal as pleaded in his affidavit. He further submitted that there are no sufficient grounds for extension of time and that the applicant did not account for each day of delay.

On the strength of the above submission, the learned counsel for the respondent urged this court to dismiss the applicant's application.

In rejoinder, counsel for the applicant maintained his prayers for this court to grant an extension of time to refile the appeal on the same grounds of appeal in order to ascertain who was the proper person because Kassim was the Administrator of Punja.

Having gone through the submissions from both parties it would appear to me to determine as to *whether the applicant has established sufficient reason for this court to enlarge time.*

It is settled law that an application for extension of time is grantable where the applicant presents a credible case to warrant the grant of such extension. This means that a party seeking for extension of time must

state the reason for his delay. The law also requires the applicant to act equitably. See the Supreme Court of Kenya's decision in **Nicholas Kiptoo Arap Korir Sa/at v. IEBC & 7 Others**, Sup. Ct. Application 16 of 2014). Gathering from the submissions, in the case of **Hans Paul Automechs Ltd v RSA Ltd**, Civil Application No. 126/02/ of 2018 (unreported), the Court of Appeal of Tanzania at Arusha cited the case of **Alliance Insurance Corporation Ltd v Arusha Art Ltd**, Civil Application No. 33 of 2015 (unreported) and stated that:-

"Extension of time is a matter of discretion of the court and the applicant must put material before the court which will persuade it to exercise its discretion in favor of an extension of time."

Likewise, in the case of **Benedict Mumello v Bank of Tanzania, Civil Appeal No. 12 of 2012** where the Court of Appeal of Tanzania 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, and that extension of time may be granted where it has been sufficiently established that the delay was with sufficient cause".

As rightly pointed out by the learned counsel for the respondent, in this case at hand, the applicant has submitted on grounds of appeal, instead

of establishing sufficient reason as to why he should be extended time to refile his appeal. Failure to give sufficient reason for delay amounts to the refusal to grant extension of time.

Nevertheless, the applicant has not raised any sufficient reasons for extension of time on his affidavit. The position in our jurisprudence is settled on the matter. It is to the effect that, in determining whether the application has met the required conditions for its grant, a conclusion is drawn from the affidavit that supports the application. The rationale for this is not hard to find. It stems from the fact that an affidavit is an evidence, unlike submissions which are generally meant to reflect the general features of a party's case and are elaborations or explanations on evidence already tendered. This was observed by the Court of Appeal of Tanzania in the case of **The Registered Trustees of Archdiocese of Dar es Salaam v Chairman Bunju Village Government and Others**, Civil Application No. 147 of 2006 (unreported).

Thus, while the contention raised by the learned counsel for the applicant is contrary to the foregoing position, I am also convinced that the alleged delay is not specifically pleaded in the applicant's supporting affidavit, It and what the learned counsel for the applicant did, through his submission, was to introduce a ground of appeal and he did not bother

to submit on the reasons for the delay. Instead, he completely banked on the ground which was not stated by the applicant's affidavit. Therefore, I fully subscribe to the learned counsel for the respondent submitted that the applicant has not raised sufficient reasons to warrant this court to grant what he wants.

In the upshot, I hereby dismiss this applicant's application.

Order accordingly.

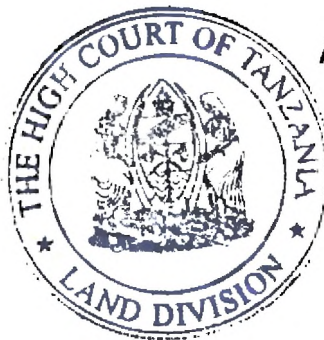
Dated at Dar es Salaam this date 25th October, 2021.


A.Z. MGEYEKWA

JUDGE

25.10.2020

Ruling delivered on 25th October, 2021 in the presence of both learned counsels.




A.Z. MGEYEKWA

JUDGE

25.10.2020