

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 03 OF 2020

YONATUS NJEWA APPLICANT

VERSUS

JUMA MOHAMED 1ST RESPONDENT

ASHA MNUBI 2ND RESPONDENT

(Arising from the Decision of the High Court of Tanzania at Land Division Land Case
Appeal No. 89 of 2012 dated 7th June 2013)

RULING

Date of Last Order: 06/10/2021 &

Date of Ruling: 02/11/2021

A. MSAFIRI, J:

This is the Ruling in respect of the Application for extension of time made under Section 11 (1) of the Appellate Jurisdiction Act Cap. 141 R.E 2019. The Application is supported by the affidavit of Yonatus Njewa, the applicant. In the chamber summons the applicant has listed prayers for this Court to grant as follows;

- 1. That this Court be pleased to extended time(sic) within which the Applicant to lodge a Notice of Appeal to the Court of Appeal of Tanzania against the Judgment and Decree of the High Court delivered on the 7th day of June 2013 in Land Appeal No. 89 of 2012.*

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2. *This Court be pleased to extend time for the Applicant to move this Court to certify the points of law for which the Applicant wish to appeal to the Court of Appeal against the Decision of the High Court of Tanzania (Land Division) delivered on the 7th day of June 2013 by Madam B.R.Mutungu Judge,*
3. *Any other orders that this Court may deem just and fit to grant.*

When the matter came for hearing the applicant enjoyed the services of Mr. Richard Madibi, Advocate while the respondent was represented by Mr. Emmanuel H. Hyera, Advocate, and the Application was argued by way of written submission.

In his submission, Advocate Madibi stated that the delay in filing notice of appeal was due to the reason that Civil Appeal No. 179 of 2017 at the Court of Appeal was withdrawn for the reason that the applicant failed to serve a copy of the letter requesting for proceedings, judgment and decree to the respondent contrary to the Court of Appeal Rules, 2009. He further argued that, the notice of appeal and certificate of point of law were withdrawn along with the said record of appeal. Since the time for re-filing the same has lapsed hence this Application. He further submitted that there was a technical delay as the Appeal was struck out based on the above explanation. Furthermore, he added that there is an illegality in the impugned decision subject to appeal whereby the court erred by failing to consider that the respondents had no cause of action against the appellant. Several decisions has been cited in support of the arguments that includes; **Tanga Cement Company Limited vs.**

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Jumanne D. Masangwa and Amos A. Mwalwanda , Civil Application No. 06 of 2001 Court of Appeal of Tanzania (Unreported), **Felician Credo Simwela Vs. Quamara Massod Battezy and Another**, Misc. Civil Application No. 06 of 2018, High Court of Tanzania, Sumbawanga (Unreported), **Hamisi Mohamed (As the Administratrix of the estate of the late Moshi Abdallah)** Civil Application No. 407 of 2017 of 2019, Court of Appeal of Tanzania (unreported) and the **Principal Secretary, Ministry of Defence and National Security Service Vs. Devram Valambhia** (1992) TLR 182.

Replying to the submission above, Mr. Hyera submitted that, the delay was facilitated by the applicant's negligence for failure to observe the law accordingly. In his opinion, the applicant has not demonstrated any sufficient reasons to convince this Court to extend time since the lengthy of delay exceed nine (9) years from the date when the judgment intended to be appealed against was delivered. In his opinion there is degree of prejudice to the respondents as after nine years of delay, the decree has already been executed therefore the matter has finally been concluded as there was no Application to stay the execution of the judgment of this Court. If the matter are prolonged, the respondent and the community will likely to suffer irreparable loss by blocking the street easement which is used up to now.

In rejoinder, the applicant's counsel repeated his submission in chief and insisted that the applicant has adduced sufficient reasons to warrant the grant of extension of time by this Court.

Having read the parties' rival averments and submissions, the question for determination is whether the applicant has presented

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sufficient reasons for this Court to invoke its discretionary powers in granting or refusing this Application. In exercising their discretionary powers to grant or deny extension of time in such Applications, Courts have some guidelines. In **the Attorney General vs. Twiga Paper Productions Limited**, *Civil Application No. 108 of 2008* (unreported, DSM), Nsekela, J.A (as he then was), held that:-

"It is now well settled that the decision whether or not to extend time is essentially discretionary. The matters which this Court takes into account include (i) the length of delay,(ii) the reason of the delay;(iii) degree of prejudice to succeeding if the application is granted. The discretion is unfettered but like all judicial discretion, it must be exercised on reason not caprice and the exercise must not be arbitrary or oppressive."

In the present matter, admittedly, according to the Court of Appeal Rules 2009, time starts to run from the date of the decision against which it is desired to appeal. Rule 83 of the Rules provides as follows:

"83. Notice of appeal

(1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.

*(2) **Every notice shall, subject to the provisions of Rules 91 and 93, be so lodged within thirty days of*** *Alle.*

the date of the decision against which it is desired to appeal.” (emphasis supplied).

In dealing of Application of this nature especially if the reason adduced for granting application of extension of time is none other than pursuing rights under the wrong course as the present one, the proper provision is section 21 of the Law of Limitation Act Cap 89 R.E 2019.

“21 (2); In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith, in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

Applying the above principle to the instant matter, I am not persuaded that the applicant has been able to present to this Court sufficient reasons for his delay in lodging notice of appeal and certificate on point of law on time. I say so because as per his affidavit particularly paragraphs 7, 8, 9 and 10 in support of this Application, after the delivery of the judgment subject to the appeal in Land Appeal No.89 of 2012, the applicant was always in court corridor prosecuting other Applications related to the suit, among them are Misc. Land Application No. 628 of 2015 for certificate on point of law and notice of appeal and the same was granted. Then the applicant filed the Civil Appeal No. 179 of 2017 the

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same was withdrawn for non-service. According to the record if I can take into account the technical delays as presented by the respondent and apply Section 21 of Cap. 89 above, still the applicants have failed to account for each day delayed from the date when the Appeal was withdrawn from the Court of Appeal.

The statutory time to lodge a notice of appeal to this Court is 30 days as explained in Rule 83 (2) herein above. In this case, the decision by Hon. Mutungi, J was given on 07/06/2013 and Civil Appeal No. 179 of 2017 by the Court of Appeal was struck out on 28/10/2019. Applying section 21 of the Law of Limitation Act, it is obvious the time started to count from the day when the Court of Appeal withdrew the Civil Appeal No. 179 of 2017 above. Now counting from the withdrawn date i.e. 28/10/2019 to the date of filing this Application i.e. on 02/01/2020, almost 65 days have lapsed.

If I can minus 30 days of lodging notice of appeal and certificate on point of law accordingly, the applicant remains with 35 days which are un-accountable and un-explained. It is my opinion that since the matter has been in Court for nearly a decade, the applicant is required to give a proper explanation by account for each day of delay so that the other party should not feel prejudiced. I say so because it is in interest of justice that matters should come to an end and let the winning side to enjoy the fruit of its victory without being undermined by unnecessary delay tactics.

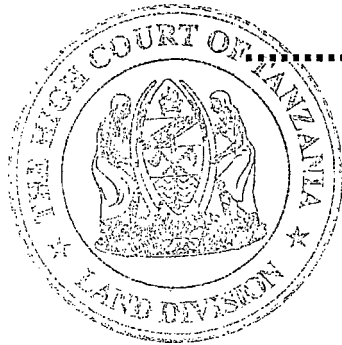
Since the applicant has failed to account for each day within the 35 days of delay according to the law, I find the Application to have no

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sufficient cause to be granted extension of time. I therefore proceed to dismiss it. I make no order to costs.

It is so ordered.

Dated at Dar es Salaam this 02nd of November 2021.



A. Msafiri

A. MSAFIRI

JUDGE