

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.471 OF 2022**

(Originating from Land Case No. 148 of 2019 before Hon. Mwenegoha, J)

DONALD KOMELA SIMTOWE APPLICANT

VERSUS

DANIEL THOMAS SIMTOWE (Administrator of
the estate of late THOMAS MENGO SIMTOWE) **RESPONDENT**

RULING

Date of last Order: 07.09.2022

Date of Ruling: 08.09.2022

A.Z.MGEYEKWA, J

This application is brought under the certificate of urgency. The applicant is praying for an extension of time to lodge a Notice of Appeal out of time against the decision of this court in Land Case No. 148 of 2019. The application, preferred under the provisions of section 11 (1) of the Appellate

Jurisdiction Act, Cap. 141 [R.E 2019]. The affidavit is supported by an affidavit deponed by Donald Komela Simtowe, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by James Venant Ndumbaro, the respondent.

When the matter was called for hearing on 7th September, 2022, the applicant enlisted the legal service of Mr. Armando Swenya, learned counsel, and Mr. Julius Kamote, learned counsel.

In support of the application, Mr. Swenya urged this court to fully adopt the affidavit to form part of his submission. He submitted that the applicant is praying for an extension of time to lodge a Notice of Appeal to the Court of the Appeal against the Judgment and Decree of this court in Land Case No148 of 2019. Mr. Swenya went on to submit that it is the discretion of the court to extend time but the applicant must account for all the periods of delay, the delay should be inordinate and adduced sufficient reasons, the reasons should not be inordinate and the applicant must show diligence not sloppiness in the prosecution of the action that he intends to take and the Court needs to ascertain itself whether there is an illegality. Mr. Swenya submitted that the applicant has met all grounds for an extension of time. He stated that the applicant was not negligent and he accounted for the days of

delay. He added that the applicant filed a Notice of Appeal within time. Unfortunately, his Advocate disappeared, thus, he had to hire another counsel. Mr. Swenya went on to submit that they wrote a reminder letter to the Deputy Registrar requesting copies of the impugned judgment. However, later the counsel for the applicant noted that the Notice of Appeal was defective and there was an indication that the respondent was not notified that the applicant has lodged a Notice of Appeal.

He continued to submit that the Court of Appeal of Tanzania struck out the Notice of Appeal, hence, the applicant had to refile the same. He insisted that the applicant has adduced sufficient reasons to warrant this court to grant his application. To support his submission he referred this court to the applicant's affidavit particularly paragraphs 3, 6, 7, 8 and 9. He also cited the case of **Hamisi Mohamed** (as an administrator of the estate of the late Risasi Ngao) v **Mchumwa Moshi** (as an administrator of the estate of the late Moshi Abdallah), Civil Application No. 107/17 of 2019.

Ending, the learned counsel for the applicant beckoned upon this Court to grant the applicant's application.

In reply, Mr. Julius urged this Court to adopt the counter affidavit to form part of his submission. The respondent's counsel contended that the applicant

has raised his complaints against his counsel while they are on the same footing. He lamented that it is not correct for the applicant to blame his counsel. To fortify his submission he cited the case of **Lim Han Yang & Another v Lucy Treseas Kristensen**, Civil Appeal No. 219 of 2019. He argued that the applicant has not accounted for the days of delay. To support his submission, he referred this Court to the case of **Ngao Godwin Losers v Julius Mwarabu**, Civil Application No. 10 of 2015. He claimed that the applicant in his affidavit did not attach the first reminder letter. Mr. Julius insisted that the reminder letter was filed after noting that the respondent has served his tenants with a notice of eviction on 1st June, 2022.

Mr. Julius did not end there, he contended that there was no any defect in the previous Notice of Appeal. He added that, in case there was any defect then the same could have been addressed before the Court of Appeal Mr. Julius valiantly argued that the applicant is playing the time and as the result, the respondent is delaying executing the order of the court. He strenuously argued that the delay of 186 days is not ordinate.

On the strength of the above submission, the learned counsel for the respondent urged this court to dismiss the application with costs.

In his rejoinder, Swenya reiterated his submission in chief. Stressing that the applicant has accounted for the days of delay and insisted that the applicant was not negligent instead his previous counsel failed him. Ending, he urged this court to grant his application.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter-affidavit, I find the issue for determination is, *whether the applicant adduced sufficient reasons for the delay to file a Notice of Appeal.*

The power of this Court to extend the time to file a Notice of Appeal to the Court of Appeal is provided under section 11 of the Appellate Jurisdiction Act, Cap.141 which provides that:-

“ 11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.”

It is worthy of note, that grant of an application for extension of time is in the discretion of this Court. Such discretion is exercised upon the applicant satisfying the Court by presenting a credible case and sufficient or good cause. What amounts to sufficient or good cause has been discussed in many cases including the Court of Appeal of Tanzania in the case of **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 and (all unreported) and **Farida Ahmed Mbaraka v Domina Kagaruki & Others**, Civil Reference No. 14 of 2019 [TANZLII 20th October, 2021].

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, it is clear that the contention revolves around two grounds that the applicant considers as sufficient cause for the delay in lodging the appeal.; accounting for the days of delay and technical delay. On paragraph 8, the applicant stated that they filed a Notice of Appeal, however, they realized that the same was defective hence they had to withdraw the Notice of Appeal. The learned counsel for the applicant in his submission relied on the ground accounting for each day of delay and technicality. He submitted that the applicant lodged a Notice of Appeal within time. To support his submission he referred this

Court to paragraph 4 of the applicant's affidavit and annexure B a copy of Notice of Appeal dated 20th December, 2021, the said Notice of Appeal was struck out on 15th July, 2022. Thereafter, Swenya lodged the instant application within time.

On his side, the learned counsel for the respondent opposed the application. Mr. Julius valiantly argued that the applicant did not account for each day of delay and the issue of illegality did not arise.

In my considered view, I find that the applicant has demonstrated good reasons for his delay. It is worth noting that in legal parlance, technical delays, it constitutes a sufficient cause for enlargement of time within which to lodge a Notice of Appeal to the Court of Appeal of Tanzania. This principle was accentuated in the case of **Fortunatus Masha v William Shija** [1997] TLR 154 and was invigorated in subsequent decisions of the Court of Appeal of Tanzania, such as **Amani Girls Home v Isack Charles Kanela**, CAT-Civil Application No. 325/08 of 2019 at Mwanza (unreported), in which diligent pursuit of the appeal through unsuccessful applications was deemed to be sufficient to warrant an extension of time.

The circumstances of the instant application reflect what transpired in the **Amani Girls Home** (supra), errors committed by the applicant through her

counsel do not have the effect of banging a door on the applicant and denying him another opportunity to challenge the decision of this Court. I hold that the applicant has not exhibited any sense of loathness in dealing with this matter and that the delay was justified.

In sum, I hold that the applicant has passed the legal threshold set for an extension of time to file a Notice of Appeal. Therefore, I proceed to grant the applicant's application to lodge a Notice of Appeal within thirty days from today.

Order accordingly.

Dated at Dar es Salaam this date 8th September, 2022.




A.Z.MGEYEKWA
JUDGE
08.09.2022

Ruling delivered on 8th September, 2022 via audio teleconferencing whereas both learned counsels were remotely present.




A.Z.MGEYEKWA
JUDGE
08.09.2022