

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 365 OF 2021

(Arising from the Land Case No. 175 of 2011 dates 12th May, 2016 Hon.
Rugaazia, J)

IBRAHIM ALLY YUSUPH MPORE (Administrator of
the Estate of the SALUM ALLY YUSUPH MPORE) **APPLICANT**

VERSUS

NALGIS ALLY YUSUPH MPORE **1ST RESPONDENT**

RAHMAT AHMAD JUMA **2ND RESPONDENT**

RULING

Date of Order: 05.09.2022

Date of the Ruling: 13.09.2022

A.Z. MGEYEKWA, J

In this application, the Court is called upon to grant leave that will enable the applicant to file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this Court in Land Case No. 175 of 2011. The application is

brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019] and section 95 of the Civil Procedure Code Cap.33. The application is supported by an affidavit deponed by Ibrahim Ally Yusuph Mpore (Administrator of the Estate of The Yusuph Mpore), 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 Mashaka Ngole, counsel for the respondent.

When the matter was called for hearing 1st August, 2022 the applicant appeared in person, unrepresented while the respondent enjoyed the legal service of Mr. Mashaka Ngole, learned counsel.

In his submission, the applicant prayed this court to adopt the contents of his affidavit and form part of his submission. He started to narrate the genesis of this application. The applicant submitted that the application traces from the decision in Land Case No. 175 of 2011 dated 12th May, 2016 which was decided in favour of the respondent. He went on to state that the applicant was required to file a Notice of Appeal within 30 days as per Rule 83 (2) of the Tanzania Court of Appeal Rules of 2009 as amended, but he delayed filing the same for reasons contained in the affidavit.

The applicant went on to submit that he was successfully granted leave to appeal to the Court of Appeal against the decision of this Court. The applicant submitted that in the Misc. Land Application No. 384 of 2016 the respondent raised a preliminary objection that the appeal was time-barred and the matter was struck out by the Court of Appeal of Tanzania after the applicant's counsel conceded that the application was time-barred.

The applicant went on to submit that this court has discretionary power in granting an application for an extension of time for the applicant to file a Notice of Appeal. He added that this court is supposed to exercise the said power judiciously. To fortify his position, he cited the cases of **Oswald Masatu Mwinzarubi v Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 CAT (unreported), and **S. L Isangi Auction Mart & Court Broker v Samwel Kimaro**, Misc. Land Application No. 75 of 2020 HC (unreported).

He continued to submit that the Court can be enjoined to consider granting this kind of application upon the applicant showing that there good cause. To buttress his position he cited the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported). The court raised the following guidelines:-

- (i) *The applicant must account for all the periods of delay*
- (ii) *The delay should be inordinate.*
- (iii) *The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) *If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The applicant went on to submit that the Civil Appeal No. 83 of 2018 was struck out on 27th April, 2021, and the application for extension of time was lodged on 22nd July, 2021 a lapse of 87 days. He submitted that before and after the case was struck out all the time the applicant was active and made follow-ups of this matter diligently. Supporting his submission he cited the cases of **Salvand K. A Rwegasura v China Heinan International Group Co. Ltd**, Civil Reference No. 18 of 2006 (unreported) and **Royal Insurance v Kiwengwa Strand Hotel Ltd**, Civil Application No.111 of 2019. The applicant went on to state that the Court of Appeal may also consider other factors for extension of time, this was enunciated in the case of **Bank of Africa Tanzania Ltd v Rose Miyago Assea**, Misc. Commercial Cause No. 228 of 2010.

The applicant contended that the delay was caused by an Advocate's error or negligence. To support his argumentation he cited the case of **Zuberi Mussa v Shiyanga Town Council**, Civil Application No. 3 of 2007. He added that the counsel's mistake was purely human thus it does not amount to gross negligence or lack of diligence. To bolster his submission he cited the case of **Diamond Motors Ltd v K. Group (T) Ltd**, Civil Application No. 72/ 01 of 2019. He stated that the applicant has overwhelming chance for success if this application will be granted.

On the strength of the above submission, he beckoned upon this court to grant the applicant's application to file a Notice of Appeal afresh.

In reply, Mr. Mashaka stated that this Court is called upon to determine whether the applicant has adduced sufficient reason for grant of the relief sought by the applicant and whether there is a substantial account of each day of delay by the applicant to file a notice of appeal in terms of the provision of Rule 83 (2) of the Court of Appeal Rules, 2009. He went on to submit that upon grant of leave to appeal the applicant filed a Civil Appeal No. 83 of 2018 and the respondent raised a point of law whereas the applicant conceded and the application was struck out. It was his submission

that saying the counsel for the applicant wrongly conceded to the objection is not correct.

The learned counsel for the respondent argued that after the Civil Appeal No. 83 of 2018 was struck out on 27th April, 2021 the applicant filed the instant application on 22nd July, 2021 a lapse of 87 days and the same raises the question of whether this is an ordinate delay or inordinate delay. The counsel for the respondent valiantly stated that the applicant's wave of argument is premised on making follow-ups, time being lost in court corridors is not a good reason in the eyes of the law, and for extension of time. He added that the applicant's submission is raising sympathetic assumptions premised on the applicant being a layman.

The counsel for the respondent opposed the application because it was delayed for 87 days and the applicant has not accounted for the days of delay. To support his submission he cited the case of **Lyamuya Construction** (supra). He claimed that there is no indolence on part of the applicant and the advocate and this court does not amount to sufficient cause. He added that to justify delay the same is discussed in the case of **Juma Mtugirehe v The Board of Trustees of Tanganyika National Parks t/a Tanzania Parks**, Civil Appeal No. 66 of 2011.

He insisted that a delay of a single delay has to be accounted for. To support his argumentation he cited the case of **A- One Products and Brothers v Abdallah Almas & 25 Others** (unreported) and **Zawadi Msemakweli v NMB PLC**, HC Labour Division.

In conclusion, the learned counsel for the respondent urged this court to dismiss the application with costs.

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93. It is settled law that an application for an extension of time is grantable where the applicant presents a credible case to warrant a grant of such extension. The law also requires the applicant to act in a equitably. This requirement got a broad explanation in the celebrated decision of the Court of Appeal in **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 2 of 2010 (unreported), wherein key conditions on the grant of an application for extension of time were laid down. These are:

"(a) The applicant must account for all the periods of delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action he intends to take.

(d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as illegality of the decision sought to be challenged."

Looking at the applicant's affidavit, it is clear that the applicant's explanation is based on the preliminary objection raised by the respondent and the issue of time-barred. Reading paragraphs 4, 5, 6, 7 & 8 of the applicant's affidavit, the applicant has narrated how the Court of Appeal strike out the Civil Appeal No. 83 of 2018 on 27th April, 2021. The applicant did not narrate the step taken from the date when the Civil Appeal No. 83 of 2017 was struck out on 27th April, 2021. In paragraph 10 of his affidavit, the applicant tried to convince this court that there is an arguable case if the application is granted.

This ground cannot hold water because the applicant was required first to account for each day of delay. It is trite law that any delay even of a single day matters, and it has to be accounted for, as it was held in the case of **Bushiri Hassan vs Latifa Lukio Mashayo Civil Appeal No.3 of 2007 (unreported)** where the court held that: -

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

Applying the above authority, I am in accord with Mr. Mashaka, counsel the respondent that the applicant has not accounted for each day of delay to move this court to grant his application.

Having failed to surmount that hurdle, the Court cannot exercise its discretion by granting the applicant's application. Thus, this application is with no merit, I dismiss the application without cost.

Order accordingly.

Dated at Dar es Salaam this date 13th September, 2022.


A.Z.MGEYEKWA

JUDGE

13.09.2022

