

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MSC. LAND APPLICATION NO. 228 OF 2022

(Arising from Misc. Land Application No. 744 of 2020, Land Appeal No. 152 of 2021)

ELIZABETH T. BALALI APPLICANT

VERSUS

PETER AMO.....1ST RESPONDENT

TITI PONSIAN NSABI.....2nd RESPONDENT

Date of last order: 23/9/2022

Date of Judgment: 03/10/2022

RULING

KADILU, J.

This is an application for extension of time to file leave to appeal to the Court of Appeal in respect of Land Appeal No. 152 of 2021. The Applicant also prays for costs. The application has been filed under s. 11 (1) of the Appellate Jurisdiction Act, [Cap 141 R.E. 2019]. It is supported by an affidavit of the applicant. According to the supporting affidavit of the Applicant, she lost her appeal before this court that was decided by Mgeyekwa, J., on 29/9/2021. Dissatisfied with the said decision, she

requested for a copy of judgment on 30/09/2021 and she filed notice of appeal on 08/10/2021.

She was supplied with a copy of the said judgment on 07/10/2021. She filed this application on 13/05/2022. She was supposed to apply for leave within 30 days from the date the judgment was delivered. According to the Applicant's affidavit, which was also the submission of his advocate Mr. Frank Michael, during the hearing of the application, a delay of 193 days ensued for a reason that she was following up the copies of judgment and proceedings. The time lapse was also attributed to by the application for extension of time to file leave to appeal to the Court of Appeal, but the same was struck out on 23/03/2022. She then wrote a letter to the Registrar requesting for a ruling of application No. 744 of 2022 which she obtained on 21/04/2022. The Applicant stated in her affidavit that the delay was not caused by negligence, but it was because she was availed by the copies of judgment, proceedings and order lately and she could not appeal without attaching a copy of judgment. She also stated that there is a serious irregularity and incorrectness to be determined by the Court of Appeal, including whether or not the court had jurisdiction to order attachment of

the property whose owner was not a party to the proceedings and who was not given right to be heard.

Mr. Yona Habiye learned Advocate, represented the Respondent during hearing. He submitted along with what was averred by the Respondent in the counter affidavit. He stated that Land Application No.152 of 2021 was decided on 29/9/2021 so, the time for filing leave was to expire on 29/10/2021. He said that on 07/10/2021 when the applicant obtained copies of judgment and proceedings, she was still within time for filing leave. Instead of filing leave to appeal, the applicant wasted time to file Misc. Land Case No. 744 of 2021 (application for extension of time) which was struck out on 23/03/2022.

He submitted that the application is opposed because the grounds adduced by the applicant are unfounded and the applicant has failed to account for each day of delay. The delay was caused by the applicant's negligence which cannot be a ground for extension of time. Even after application for extension of time was struck out on 23/03/2022, the applicant delayed to refile the application immediately and opted to file a fresh application on 13/05/2022. The learned Advocate averred further that there is no any irregularity or error to be determined by the Court of Appeal as contended

by the applicant. He finally prayed that the court should not grant the application because the applicant has failed to show a good cause for the delay and account for each day of delay as required by the law.

Mr. Fank Michael, learned Advocate for the respondent rejoined by insisting that the applicant has shown a good cause for the delay. He argued that the delay was not too long to justify the deny of the applicant's right of appeal. He maintained that the delay was not caused by negligence as alleged by the respondent's Advocate. He finally urged this court not to be bound by procedural technicalities which may cause loss of the applicant's right to appeal.

After a thorough consideration of affidavits by the parties and submissions by the learned Advocates, I now turn to determine the application at hand. I should begin by pointing that it is a very settled position of the law that an application for extension of time may not be granted, but for a good cause. In *Mary Mchome Mwambo & Another v Mbeya Cement Co. Ltd*, Civil Application No. 27 of 2016, the Court of Appeal held that if a party establishes that he did not sit back, but pursued his matter in court, that fact may amount to good cause subsequently in an application for extension of time.

What can be gathered from the account on how the applicant's time was used from the day of decision to the date of filing the application, it is clear that there was ignorance on how the period of limitation is computed. As per s. 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019], in computing the period of limitation prescribed for an appeal, the time used for obtaining a copy of the decree or order appealed from is usually excluded. Thus, the time for filing leave to appeal started to run against the applicant on 07/10/2021 when the applicant obtained copies of judgment and proceedings. As correctly stated by the Advocate for the respondent, on that day when the applicant obtained copies of judgment and proceedings, she was still within time for filing leave. There was no reason for the applicant to file application for extension of time because the time was not yet expired. Therefore, the reason appearing under paragraph 7 of the applicant's affidavit that she had earlier filed an application for extension of time and she did so within time, but the said application was struck out for being supported by a defective affidavit cannot be a good cause for the delay. Although the applicant's Advocate advanced this fact to support the argument that the applicant was not idle in pursuing a remedy to the matter, the same was done by taking a wrong path.

The learned Advocate for the respondent strongly contested this point and stated that by filing the application for extension of time before expiry of the same, is nothing more than proof of negligence, recklessness or inaction on the part of Counsel for the applicant, and those have never been considered as forming good cause for purposes of extension of time. So, it is the Counsel's submission that the applicant has not accounted for each day of delay from 29/9/2021 to 13/05/2022 when the application was filed.


On the issue of irregularity, I am of the considered view that irregularity must be rightly on the face of the records. Mere allegations by the applicant that there was irregularity in the proceedings by the High Court without any proof or further details to that effect, cannot solely stand as a ground for granting extension of time. Since there is no substantial evidence of the said irregularity, this court cannot rule with certainty that there was such irregularity.

Therefore, this court rules that the applicant has basically failed to advance sufficient reasons for the delay including accounting for each day of delay.

In view of this, I find that the application for extension of time to file leave of appeal is devoid of merit. It is accordingly dismissed with costs.

It is so decided.




KADILU, M. J.

JUDGE

03/10/2022

Ruling delivered on 3rd October, 2022 in the presence of Miriam Majamba, holding brief for Mr. Yona Habiye, Advocate for the Respondent.




KADILU, M. J.

JUDGE

03/10/2022.