

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 141 OF 2022

(Arising from Land Appeal No. 98 of 2020)

MONDAY KACHINGWE.....APPLICANT

VERSUS

ATHUMANI SALUM KITAMBAZI.....RESPONDENT

Date of Last Order: 07.09.2022
Date of Ruling: 28.10.2022

RULING

V.L. MAKANI, J.

This application is by MONDAY KACHINGWE. He is seeking for the following orders:

- 1. That this honourable court be pleased to grant the applicant extension of time within which to lodge a notice of appeal against the decision and orders of this court (A.S. Kagomba, J) made on 30th day of June, 2021 out of time.*
- 2. That this honourable court be pleased to grant extension of time to the applicant within which he may present an application for leave to appeal to the Court of Appeal out of time.*
- 3. That this honourable court be pleased to grant the extension of time within which he may apply by letter to be issued by all certified copies of judgment made by A.S. Kagomba, J on 30th day of June, 2021 and decree on appeal and the proceedings out of time.*
- 4. Costs of the application.*

5. Any other relief(s) this honourable court may deem fit and/or equitable to grant.

The application is made under section 11(1) of the Appellate Jurisdiction Act CAP 141 RE 2002 and section 14(1) and 21(2) of the Law of Limitation Act CAP 89 RE 2002 and any other enabling provisions of the law in force for the time being. The application is supported by the affidavit of the applicant herein. The respondent filed a counter affidavit to oppose the application.

With leave of the court the application was argued by way of written submissions. Mr. Isaac Nassor Tasinga, Advocate filed submissions on behalf of the applicant. He submitted that there was an issue of illegality which was apparent on the face of record which justifies extension of time. Another reason is that the applicant was not informed timely about the date of the decision at the High Court. He was informed by way of email communication (**Annexure M-1** to the affidavit) and when he received the judgment, he was very sick so he could not take legal measures timely (**Annexure M-2** to the affidavit). He said the delay was not deliberate but was due to unforeseeable circumstances and that for all of the days the applicant was vigilant to make sure he files the application within time but was vitiated by delay of obtaining the

judgment as well the issue of being sick. He prayed for the court to grant the prayers in the Chamber Application with costs.

Mr. Jacob C. Minja, Advocate drew and filed submissions on behalf of the respondent. Mr. Minja brought to the attention of the court that the application was incompetent in law for including three prayers in one application which result to the application to be res subjudice. He prayed for the application to be struck with costs.

Mr. Minja on the extension of time to file Notice of Appeal, said that it is provided under Rule 83(1)(2)(5) that a person who desires to file Notice of Appeal has to do so within 30 days from the date of the decision. He submitted that the judgment was delivered on 30/06/2021 the applicant and his advocate were present, and this is indicated on page 1 of the decree of this court. So, the applicant was supposed to file the notice of appeal on 30/07/2021. He said there are no justifiable reasons that have been given as to why there is a delay of more than 9 months from when the decision was given to when this application was filed on 04/04/2022. He said according to Rule 83(5) there is no need to have the decision when filing a Notice of Appeal. So, the reason by the applicant that he was waiting for a copy of the judgment is not sufficient and further that

he was sick is also not true because the medical certificates show that he was attending hospital on 24/11/2021 whereby the 30 days provided by the law had already elapsed.

As for leave to appeal to the court of appeal Mr. Minja said they are no reasons advanced as to the delay. He said the applicant has delayed filing his application for more than 279 days. he said the reason that he was sick is not true as the medical certificate shows that he attended hospital on 24/11/2021 which time he was already out of time, and he has not accounted for the delay. He relied on the case of Paul Bramley Hill vs. Security Group Cash in Transit, Labour Revision No. 21 of 2013. He said even if one counts from the date the applicant received the email on 27/10/2021 to the time this application was filed on 05/04/2022 it is more than three months which have not been accounted for. He said according to the affidavit of the applicant the delay is inordinate and it arises from within the applicant's indolence and lassitude. Mr. Minja observed that there is no reason advanced by the applicant to justify the delay because according to the law there must be an account of each day that passed or delay which the applicant is omitting to do. He cited the case of **Fortunatus Masha vs. William Shija [1997]**

TLR 145 where it was stated that the applicant is duty bound to account for a period delayed in taking requisite steps.

As for the reason of illegality Mr. Minja said the illegality claimed by the applicant is not apparent and for the ground of illegality to apply it must be firstly of sufficient importance and secondly it must be apparent on the face of record as was stated in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Association of Tanzania, Civil Appeal No. 02 of 2010 (CAT-Arusha)** (unreported). He concluded by saying that the applicant has failed to justify the delay and so the application ought to be dismissed with costs.

No rejoinder submissions were filed by the applicant.

I have gone through the submissions by Counsel for the parties and the main issue for determination is whether this application has merit. I will start with the objection that was raised by Mr. Minja. It is the practice that notice of objection has to be given formerly to the other party for reason of preparation to argue the same. With due respect to Mr. Minja, the raising of an objection within the submissions is not procedural unless there are very exceptional circumstances of which are supposed

to be outlined by Counsel whereas the court would consider and grant leave. Since Counsel has not given reasons why the objection was not raised as is the practice then the said objection is disregarded.

It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

In the present case the applicant alleges that he was delayed getting copies of the judgment and decree and further he got sick. I have gone through the records. It is not disputed that the decision subject of this application was delivered on 30/06/2021 and this application was filed on 05/04/2022. Accordingly, this is about 276 days. As correctly stated by Mr. Minja the filing of a Notice of Appeal under Rule 83(5) of the Court of Appeal Rules, do not require the attachment of the decision subject of the appeal. In that regard, the reason advanced by the applicant that he was waiting for the copies of the judgment and decree has no merit and it is dismissed.

The other reason for the delay by the applicant is that he received the judgment late and by email. As said hereinabove, the filing of a Notice of Appeal does not require the attachment of the judgment or decree so this reason cannot stand. There was also an allegation that the applicant was not aware of the decision by the court but as it can be noted from the Decree the applicant was present on the date when the said judgment was delivered so he was aware of the decision of the court from the very same date the said judgment was delivered. This reason too has no merit.

The last reason was sickness. That the applicant has been sick as such he has not been able to run around and file the Notice of Appeal and initiate the whole process of appeal including the filing of leave to appeal to the Court of Appeal. The issue of sickness is reflected in the medical certificates attached as **Annexure M2** to the affidavit. But a critical look at the certificates reveal that the applicant received medical treatment starting from 24/11/2021. This is about 4 months after the delivery of the judgement on 30/06/2021 of which time the applicant was in good health to initiate his appeal. Since the applicant has not accounted for this delay, either in his affidavit or in the submissions and the delay is

inordinate, then in my view, there was kind of negligence and laxity on his part and therefore the court cannot grant extension of time (see **Lyamuya Construction Company Limited** (supra). Also, in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, (unreported) it was stated that:

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

As explained herein above, the applicant has failed to account for the 4 months delay and he has also failed to give sufficient reasons to warrant the court to exercise its discretionary powers in granting him extension of time to file Notice of Appeal, application for leave to appeal and also extension of time to file for a letter to request for certified copies of judgment, decree and proceedings.

In the result the application is hereby dismissed with costs for want of merit. It is so ordered.



V.L. MAKANI
JUDGE
28/10/2022