

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

**MISC. LAND APPLICATION NO. 213 OF 2022**

**HILDA RWESHUNJU .....APPLICANT**

**VERSUS**

**GODZA MATHEW BAVU** (As administrator of the estate  
of the late Prof. Immanuel Kilima Bavu) .....**RESPONDENT**

Date of Last Order: 14.09.2022  
Date of Ruling 21.10.2022

**RULING**

**V.L. MAKANI, J**

This application is by HILDA RWESHUNJU. She is applying for extension of time within which to file:

- 1. Notice of Appeal out of time.*
- 2. An application letter applying for copy of Judgment, decree and save the same to the respondent.*
- 3. An application for leave to appeal to the court of appeal of Tanzania against the decision of this court in consolidated land appeal No.122 & 137 of 2017 delivered on 20<sup>th</sup> day of May 2019 (Hon. Mkeha, J).*
- 4. Costs of this application and any other order incidental to the foregoing.*

The application is made under section 11 (1) of the appellate Jurisdiction Act Cap 141 RE 2019, Rule 10 and 47 of the Court of

Appeal Rules 2009 (the **Court of Appeal Rules**), section 95 of the Civil Procedure Code, Cap 33 RE 2019 (the **CPC**), section 37 (1) (e) and 48 (2) of the Land Disputes Courts Act, Cap 216 RE 2019.

With leave of the court the applicant personally drew and filed submissions to support her application. Mr. Egid S. M. Mkoba, Advocate drew and filed submission in reply on behalf of respondent.

The applicant prayed to adopt the contents of her chamber summons and affidavit. She gave a brief background of the matter and added that, the decision in Consolidated Land Appeals No.122 & 137 of 2017 was delivered in favour of the respondent. That she immediately filed Notice of Appeal to the Court of Appeal of Tanzania. She said that in the process of appeal she wrote a request letter for the copies of the decision to the High Court Land Division on 22/05/2019. That was two days after delivery of the judgment. She said all the documents were prepared by the advocate who assisted her at the Tribunal. She said she failed to pay instruction fees to the former advocate to continue representing her for appeal purposes. That the applicant retained the former advocate to assist in preparing notice of appeal and application letter. That the applicant started looking for legal aid

to assist her in the appeal. That meanwhile the applicant on 28/03/2019 received a call from Zanzibar that her only daughter was very sick. That the applicant immediately travelled to Zanzibar on 29/05/2019 to attend the sick daughter (**Annexure HR5**), and she was still within the time to appeal. That her daughter was HIV infected (**Annexure HR6**) and on September 2019 she was admitted to Mnazi mmoja Hospital and it was reported that her brain was damaged hence needed special attention. That on 21/10/2019 she received a call from her former advocate Marealle Anna that she was served with a Notice of Motion, Civil Application No.448/17/2019 by the respondent's counsel to the effect that the applicants Notice of Appeal lodged on 24/05/2019 be struck out for want of filing application for leave to appeal. That the applicant came back to Dar es Salaam on 23/10/2019 (**Annexure HR8**) and started looking for legal aid to file extension of time to file leave to appeal. That the prayers were granted via Misc. Land Application No.622 of 2019 and the applicant was granted 30 days within which to file an application for leave to appeal. That filed an application for leave to appeal vide Misc. Land Application No. 354 of 2020 and the application was heard but the High Court stayed the ruling pending the decision of Court of Appeal in Civil Application No. 448/17/2019. That the applicant on

4/12/2019 filed Civil Application No.526/17/2019 at the Court of Appeal for stay of execution upon being served with the notice of execution by the respondent. That the Court of Appeal on 19/12/2019 granted ex-parte order, staying respondent's execution application in the District Tribunal. That the Court of Appeal on 22/04/2022 struck out the Notice of Appeal in Application No.448/17/2019 for failure to take essential steps after filing the notice of appeal. That after delivery of the said order the applicant filed the present application.

The applicant in her submissions said the delay to file an application for leave to appeal was prevented by sufficient cause as she could not abandon her sick daughter in Zanzibar. She added that the appeal has a chance to succeed as the High Court in Land Appeal No.112 of 2017 ignored the issue of limitation of time and ruled in favour of respondent without any proof of documentary evidence. She supported her argument by a number of cases amongst them being the case of **Yusuf Same & Hawa Dada vs. Hadija Yusuf [2006]**, **The International Airline of the United Arab Emirates vs Nassoro Nassoro, Civil Application No.263/2016 (CAT)** (unreported), **Felix Tumbo Kisima vs TTCL Limited and Another, Civil Application No.1 of 1997 (CAT)** (unreported) and

**Attorney General vs. Twiga Paper Products Limited, Civil Application No.108 of 2008 (2011) EA 16 and Principal Secretary Ministry of Defence vs. Devram Valambia [1992] TLR 182.** She prayed for the application to be granted with costs.

In reply, Mr. Mkoba said that it is trite law that for an application for extension of time to succeed the applicant must disclose facts which constitute good cause for delay and or sufficient reasons and account for each day of delay. He said that the applicant in her affidavit has four grounds for delay:

1. She failed to pay advocate for appeal purpose.
2. She travelled to Zanzibar to nurse her sick daughter.
3. That the intended appeal has overwhelming chances of success.
4. That the judgment sought to be appealed was illegally pronounced.

He submitted that the law is now settled that financial constraints is not sufficient reason to grant extension of time. He relied on the case of **M.A. Suleiman & Sons Ltd & 2 Others vs The Registered Trustees of Anglican Church Tanzania, Civil application No.93 of 2016 (CAT)** (unreported). He added that the applicant

admitted that she had the services of a law firm, so she could have instructed her attorney to file the application for leave to appeal.

As to travelling to Zanzibar, Mr. Mkoba said that the applicant has nowhere in the affidavit mentioned the name of the sick daughter. He said the annexure reflects the name of the patient as KASIGA DORIS DAUD while the affidavit is silent it does not state the name of the daughter. He said **Annexure HR6** does not make reference to the applicant and it does not bear the patient's registration number. He asked how a patient can be admitted without a reference number. He said **Annexure HR6** state that the patient was admitted on 13/09/2019 which is contrary to the averment by the applicant in paragraph 8 that her daughter was in a very bad shape on 29/05/2019 to the extent that she could not leave her sight. That at the time of discharge, that is 18/09/2019 the patient was in fair condition (**Annexure HR6**) while the applicant in paragraph 10 of her affidavit states that she had to leave the sick daughter and travelled to Dar es Salaam. That the applicant admits in paragraph 9 and 10 that the condition of the sick was not serious that she could not attend in time the framed matters. He said **Annexure HR6** was disqualified by the Court of Appeal for various reasons, one being

that it was not deponed by medical personnel who attended Doris. He said that the ground upon which the applicant opined that the intended appeal has overwhelming chances of success has not been stated by the applicant. He added that the point of law worth for consideration must be disclosed for the application to be granted. He said in the case of **Valambia** cited by the applicant, is an authority that not all points of law constitute sufficient reasons for extension of time. He added that **Annexure HR6** does not state the condition of the sick daughter in May, June, July and August. That the affidavit states that on 13/09/2019 when she was allegedly admitted her condition was fair as from 18/09/2019. He said the applicant stated she only retained her advocate to prepare notice of appeal and an application letter. Mr. Mkoba asked himself, why didn't she retain her for application for leave to appeal? He distinguished the cases cited by the applicant. In the case of **Yusufu Seme** (supra) he said in that case applicant relied on the wrong interpretation of the law by the Counsel. He insisted that being in Zanzibar does not amount to prevention of filling an application for leave. He prayed for the application to be dismissed with costs.

In rejoinder, the applicant reiterated her main submissions. She said that Mr. Mkoba has to the large extent challenged **Annexure HR6** but he has failed to state which law requires the connection between applicant and the **Annexure HR6**.

The main issue for consideration is whether this application has merit. For the court to exercise its discretion powers in granting extension of time to the applicant must place before the court sufficient reasons for delay. In the case of **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Limited, Civil Application No.96 Of 2007 (CAT-DSM)** it was stated that:

*"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules".*

The main reasons for the applicant's delay in pursuing the appeal processes to the Court of Appeal are mainly two; that she was looking for legal aid as she did not pay instruction fees to the former advocate and that her daughter was seriously sick in Zanzibar. I shall discuss the reasons by the applicant generally.



It is the applicant's submission that she received a call from Zanzibar on 28/03/2019 that her daughter was sick in Zanzibar. That she travelled to Zanzibar on 29/05/2019. The sequence of events coupled with the annexures shows that the applicant left for Zanzibar and she came back on diverse dates, this is backed with medical report (**Annexure HR6**) showing that the daughter to the applicant was indeed sick. Again, **Annexure HR3** indicates that the notice of appeal to the Court of Appeal together with the request letter of the impugned decision were both prepared by the advocates, Ms. Anne Marealle being one of them. In such a situation the presumption is that the applicant had already arranged for the intended appeal and that is why the request letter and the notice of appeal were filed by the advocate who was representing the applicant at the Tribunal. Logically, the intention formed by the applicant could not be brought to a halt except for genuine reasons such as sickness and failure to meet legal services as alleged. In my view, allegations that she failed to meet instruction fees cannot be disqualified as she already had a sick daughter. The nature of the disease (HIV) stated by the applicant needs attention and care, including financial care. Due to the nature of the sickness indeed, the applicant may have been in a position of financial constraints and therefore she failed to pay for legal fees as

stated. I understand, as argued by Mr. Mkoba, that economic hardship is not among the sufficient reasons for extension of time, however, in the case at hand and considering the nature of the alleged sickness, the applicant may have well been faced with financial constraints and was not able to meet the legal fees of the advocates.

As for the medical report (**Annexure HR6**), indeed, the applicant did not state the names of the alleged daughter in her affidavit, but it suffices that the applicant deponed in the affidavit that her daughter was sick, and her daughter's name is reflected in the medical report. Mr. Mkoba did not give a different name from the one described in the medical report, consequently, the fact remains that the daughter stated in the affidavit is the same as the one stated in the medical report, meaning, the applicant indeed had a sick daughter in Zanzibar. That to me, is among factors which attributed to her delay. It is without any doubt therefore that the applicant's reasons for delay in pursuing appeal process to the Court of Appeal are sufficient. Thus, the applicant is granted extension of time to file, within **21 days** from the date of this Ruling, the following:

1. Notice of Appeal.

2. A letter applying for copy of Judgment, decree and the proceedings.
3. An application for leave to appeal to the Court of Appeal of Tanzania

There shall be no order as to costs.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**21/10/2022**