

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

MISC. LAND APPLICATION NO 398 OF 2022

(Arising Land Appeal No. 21 of 2021)

ATHUMANI MPATE NGONWE (Administrator of the Estate of the late
SAID ABEID MKETO)..... **APPLICANT**

VERSUS

**SALUM SAID KULUWIA &
HABIR MAULID KULUWIA** (Administrators of the estate of the Late
MAULID KULUWIA MOHAMED).....**RESPONDENTS**

Date of Last Order: 03.11.2022
Date of Ruling 28.11.2022

RULING

V.L. MAKANI, J

This application is by ATHUMANI MPATE NGONWE. He is applying for extension within which to file notice of appeal to the Court of Appeal against the decision of High Court (Land Division) in Land Appeal No.21 of 2021 (Hon. Mango, J)

The application is made under section 11(1) of the Appellate Jurisdiction Act Cap 141 RE 2019. Mr. Leslie Saliyna Koini, Advocate for the applicant, swore the affidavit in support of the application;

while Kambibi Kamugisha, Advocate swore a counter affidavit in opposition of the application.

The matter proceeded by way of written submissions, Leslie Salyina Koini, Advocate, represented the applicant while Mr. Armando Swenya, Advocate represented respondents.

I have noted in the records that Mr. Koini filed a notice of preliminary objection. However, this notice was filed on 03/10/2022 after the order for written submissions was given. And even when the matter came for mention with the view to fix a ruling date on 03/12/2022, Mr. Koini did not say anything about the notice, and he proceeded to accordingly ask the court to fix a ruling date. In the circumstances, the notice of preliminary objection on record is hereby disregarded.

As for the substantive application, Mr. Koini submitted that the decision was scheduled for judgment on 17/01/2022. That on the said date neither the applicant nor his advocate appeared, so the court adjourned the matter to 03/02/2022 when judgment was duly delivered. He said the applicant was not notified of the date and that the said judgment came to knowledge of the applicant on 08/07/2022

when he was served with the copy of the judgment and decree. He said the applicant knew of the decision after the lapse of 155 days, and within 10 days he filed this application. He craved for leave of this court to adopt the contents of his affidavit specifically paragraphs 4,5 and 6 and he insisted that the judgment date was scheduled in the applicants' absence and he thus could not in any way know the judgement date. He relied on the case of **Aminiel Mbwambo vs Omari Mchengule & Others, Civil Application No.193/204 (CAT-DSM)**(unreported). He prayed for this application to be allowed.

In reply, Mr. Swenya prayed to adopt the contents of the counter affidavit. He referred to the principles set out in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010 (CAT-Arusha)** (unreported). He said the applicant has failed to account for every single day of delay.

He said according to the proceedings, Counsel for the applicant attended the case and was informed on the exact date on which judgment was to be delivered. He insisted that Counsel appeared on 28/10/2021 and was aware that the judgment was to be delivered

on 13/12/2021 whereas on that date judgment was set for delivery on 17/01/2020 and thereafter it was set for 03/02/2022 where the applicant and his advocate did not appear. He said Counsel who swore the affidavit in support of this application is the one who was representing the applicant. He added that the applicant showed negligence and loss of interest in the matter and has not accounted for any single day of the delay. He observed that 180 days is an inordinate delay which culminates to lack of diligence on the part of Counsel since he was engaged by the applicant to appear and attend the case. He said the decision of the court was properly given in that there was nothing like illegality of the decision which was sought to be challenged. He prayed for this application to be dismissed with costs.

In his brief rejoinder, Mr. Koini insisted that the applicant did not know of the date of the judgment on 03/02/2022 until when the judgment was supplied on 08/07/2022 and action was taken immediately so there was no inordinate delay and they have shown sufficient reasons warranting grant of extension of time. Mr. Koini reiterated the submissions in chief and the insisted for the grant of the application.

Having gone through the submissions by the learned Advocates, the main issue for consideration is whether this application has merit.

It is settled law that extension of time is the discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise the said discretion (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported). In the case **Lyamuya Construction Company** (supra), the Court of Appeal outlined principles that guide courts to grant extension of time including that the applicant must account for all the delay and the said delay must not be inordinate.

The main reason advanced by the applicant for his delay to file notice of appeal is that he was not aware when the impugned decision was delivered. However, the record reveal that when the judgment date was adjourned on 17/01/2022 both advocates were present. This means the applicant and his advocate were aware that judgment would be delivered on 03/02/2022. However, on that date both the

applicant and respondent together with their respective Counsel were absent and it appear no follow up was made on the part of the applicant. In other words, the applicant and his advocate had knowledge of the date of delivery of the judgement but for no apparent reasons decided to abscond. Since the parties/advocates where present when the date was set for judgment, there was no need for the court to send out notifications/summons as the next date of appearance in court was known to the parties who had obligation to follow up thereafter. In such circumstances the applicant cannot blame the court as he chose to absent himself from court on the date of delivery of the judgment. The reason that the applicant was not aware of the judgment date is therefore not sufficient to warrant extension of time to file the Notice of Appeal.

Further, judgement was delivered on 03/02/2022 and the applicant claimed to have the knowledge of the said decision on 08/07/2022, about seven months from when the judgment was delivered. The reason that he was not aware of the judgment is not sufficient as said above and it raises doubt as to the diligence of the applicant who was then the appellant and was also aware of the date set for judgment but still kept quiet for about seven months without any

action. This is negligence on the part of the applicant, and seemingly as stated by the respondents' Counsel, the applicant had lost interest in the matter. In that regard, he cannot now shift the burden of blame to the court. In essence he has failed to account for the seven months that he did not follow up to know the outcome of the appeal.

The applicant who was then the appellant, does not state how he got copies of the judgment and decree, whether he requested for them in writing or not. In case he requested for these documents when was the exact date of doing so and when did he start making follow up? A lot of crucial issues in relation to extension of time are left unattended by the applicant. Thus, in my considered view, the applicant has failed to account for the seven months starting from 03/02/2022 when the impugned judgment was delivered to 18/07/2022 when he filed this application and the said delay is inordinate contrary to the principles laid down in the landmark case of **Lyamuya Construction Company Limited** (supra).

On the strength of the foregoing, it is apparent that the applicant has failed to advance sufficient reasons to warrant this court to exercise its discretion to grant extension of time to file the notice of appeal.

Consequently, the application has no merit, and it is hereby dismissed with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "V.L. Makani".

V.L. MAKANI
JUDGE
28/11/2022