

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 635 OF 2022**

*(Arising from the Judgment of the High Court Land Division at Dar es Salaam  
in Land Appeal No. 159 of 2021 dated 15<sup>th</sup> August, 2022 by Hon. V. L.*

*Makani, J)*

**JAMAL SAID ..... 1<sup>ST</sup> APPLICANT**

**SEIF MWANYANGE ..... 2<sup>ND</sup> APPLICANT**

**SHOMARI KIMWAMBA ..... 3<sup>RD</sup> APPLICANT**

**KASSIM NZOMOKE ..... 4<sup>TH</sup> APPLICANT**

**VERSUS**

**KARMAL AZIZ MSUYA ..... RESPONDENT**

**RULING**

*Date of last Order: 19.12.2022*

*Date of Ruling: 21.12.2022*

**A.Z.MGEYEKWA**

In this application, the Court is called upon to grant an extension of time to file this Court, against the decision of this Court in Land Appeal 156 of 2021 delivered on 15<sup>th</sup> August, 2022 No. 202 of 2017. The application, preferred

under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit deposed by Jamal Said, the first applicant on behalf of other applicants. The respondent filed a counter affidavit deposed by Catherine A. Lyasenga, counsel for the respondent.

When the matter was called for hearing on 23<sup>rd</sup> November, 2022, the applicant was represented by Mr. Hamidu, learned Advocate, also holding brief for Ms. Catherine Lyasenga, counsel for the respondent.

Mr. Ubadi, the learned counsel for the applicants submitted that the applicant is praying for an extension of time to file leave to appeal out of time against the Judgment and Decree of Land Appeal No. 159 of 2021 delivered on 15<sup>th</sup> August, 2022 by Hon. V. L. Makani, J. The learned counsel for the applicants stated that the applicants' reasons for their delay to file their application for leave to appeal are stated in their affidavit. Mr. Ubadi submitted that the Court has discretionary power to grant an extension of time after the applicant advanced sufficient reasons or good cause. To buttress his contention he cited the case of **David Bernad Haule v Microfinance Bank PLC**, Misc. Labour Application No. 1 of 2018. Mr. Ubadi submitted that the applicants' delay is beyond their control, but the right to appeal is their right

as envisaged in the Constitution. He added that the right to be heard is one of the earliest principles of natural justice which state that no man should be condemned unheard and the court can accord the applicants' right to be heard. Supporting his submission he cited the cases of **Ghania J. Kimambi v Shedrack Ruben Ng'wambi**, Misc. Application No. 692 of 2019 and **Cambona Charles (Administrator of the Estate of the late Charles Pangani) v Elizabeth Charles**, civil Application No. 529/17 of 2019. Mr. Ubadi continued to submit that the applicants have filed a notice of appeal to the Court of Appeal of Tanzania, thus, the same signifies that the applicants intended to appeal but due to elapse of time they could not file an application for leave without obtaining an extension of time.

The learned counsel for the applicants went on to submit that the applicants have filed an omnibus application because of avoidance of multiplicity of applications. Fortifying his submission he cited the case of **Edward Bubamu v Pangani Kilauri and another v Nyamilangi Kilauli**, Land Appeal No. 06 of 2022. He stated that there is an arguable ground that attracts the attention of the Court of Appeal since this Court held that the suit land is the property of the respondent in absence of sufficient and credible evidence. Mr. Ubadi added that the Court of Appeal will determine whether the suit land was a

wakf or otherwise and he raised a ground of assessors that this Court ruled out that the opinion of the assessors were on the records of the tribunal and were reduced in writing and read over, therefore, Mr. Ubadfi wants the Court of Appeal to determine whether the opinion of the assessors were adduced in writing and put in the record of the tribunal.

In conclusion, the learned counsel for the applicants urged this Court to grant the applicants two prayers since the same are at the discretion of this Court

In reply, the learned counsel for the respondents urged this court to adopt the respondent's counsel counter affidavit to form part of his submission. Ms. Catherine Lyasenga, in her written submission, started to determine the point of objections that applicants in their application have accompanied only one affidavit affirmed by Jamal Said, the first applicant with the exclusion of other applicants. In her view, the application is incompetent for containing a defective affidavit, the same contravenes Order XIX Rule 3 of the Civil Procedure Code, Cap. 33 [R.E 2019].

Submitting on the application, Ms. Catherine submitted that the applicants have filed an omnibus application but in their chamber summons they have cited only section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 for an

extension of time to file an application for leave to appeal. She added that Rule 45 (a) of the Court of Appeal Rules of 2019.

The learned counsel for the respondent submitted that this Court under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 has given discretionary power to extend time for making an application for leave to appeal, the discretion is judicial and must be exercised according to the rules of reason and justice. To fortify her submission she referred this Court to the case of **Modestus Daudi Kangulawe (Administrator of the Estate of the late Daud Tenaungi Kangalawe) v Dominicus Utenga**, Civil Application No. 139 of 2020 CAT at Iringa.

Ms. Catherine continued to submit that the impugned decision was delivered on 15<sup>th</sup> August, 2022 and the same was ready for collection on 22<sup>nd</sup> August, 2022, and the applicants were required to file leave to appeal within 30 days of the decision. She went on to submit that accounting for the days of delay from 15<sup>th</sup> August, 2022 the applicants were supposed to file leave on 19<sup>th</sup> September, 2022, however, they filed the instant application on 10<sup>th</sup> October, 2022 a delay of 27 days and the delay is inordinate. The learned counsel for the respondent contended that the 27 days of delay have not been justified because the purported accident occurred on 10<sup>th</sup> August, 2022 and the

applicants' counsel filed a Notice of Appeal on 2<sup>nd</sup> September, successfully thus he was fit to file leave to appeal within time. Ms. Catherine claimed that Annexure J2 is a mere photo of an accident. She added that the applicant's counsel was in the position to attach Hospital chic to prove his allegations.

The learned counsel for the respondent contended that the respondent stands to suffer a lot more than the applicants for the reasons that since 2018 when Land Case No. 305 of 2018 was lodged at the tribunal the respondent stopped to develop the suit property. Ms. Catherine did not end there, she argued that the delay resulted from negligence and the applicants had failed to show diligence. She insisted that the applicants' counsel had a chance to file leave to appeal but due to his negligence, he failed to do so.

Regarding the ground of illegality, Ms. Catherine contended that there is no any point of law to be challenged by the Court of Appeal against the impugned decision of this Court. Thus, she urged this Court to dismiss the application with costs.

On the second prayer, Ms. Catherine was brief and straight to the point. She contended that the applicants in their chamber summons have not cited a proper citation of the law to move this Court to grant leave to appeal to the Court of the Appeal. She added that the applicants were supposed to cite

Rule 45 (a) of the Court of Appeal Rules, GN. 344 of 2019 which gives power to the High Court to grant leave to appeal to the Court of Appeal of Tanzania.

On the strength of the above submission, the learned counsel for the respondent urged this Court to dismiss the application for lack of sufficient reasons with costs.

Having gone through the submissions from both parties it would appear to me to determine *whether the applicant has established sufficient reason for this court to enlarge time.*

Before determining the application on merit, I find it prudent to address the point of objection raised by the respondent's counsel that the applicants' affidavit is incurable defective. I have gone through the applicants' affidavit and noted that the first applicant has affirmed on behalf of other applicants therefore the same suffice, therefore this objection is overruled.

This is an omnibus application, the applicants are praying for an extension of time to file an application for leave to appeal to the Court of Appeal and they are praying for leave to appeal to the Court of Appeal of Tanzania. However, as rightly pointed out by the counsel for the respondent that the applicants in their chamber summons have cited section 11 (1) of the

Appellate Jurisdiction Act, Cap. 141 [R.E 2019] which moves this Court to determine the first prayer related to an extension of time to file leave out of time. Therefore, this Court is not moved to determine the second prayer of granting leave to appeal to the Court of Appeal. Therefore the second prayer is disregarded.

In the application for an extension of time to file an application for leave to appeal, the position of the law is settled and clear that in an application for an extension of time, the applicant is required to account for each day of delay. In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) which was delivered in May, 2019. In the case of **Bushfire Hassan v Latina Lucia Masanya**, Civil Application NO.3 of 2007 (unreported) the Court of Appeal of Tanzania when addressing the issue of delay 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 ..."*



This stance was followed in many decisions among them being the case of **Mustafa Mohamed Raze v Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported).

Encapsulated in the applicant submission and per the applicants' affidavit, it is clear that the impugned decision was delivered on 9<sup>th</sup> November, 2021 and the applicant lodged this application for an extension of time on 24<sup>th</sup> November, 2022 a lapse of one year. The applicant simply stated that they finalized the process on 31<sup>st</sup> August, 2022 when the letter of administration of the estate was granted. The applicant specifically in paragraph 4 of his affidavit stated that the family started the process of finding an administrator of the estate of the deceased without stating the exact time when they lodged their application for administration.

As far as the length of the delay is concerned, the applicants in their affidavit just narrated the sequence of events of what happened from the date of delivering the impugned Judgment to the date of filing the current application without specifying the dates of every incident. In paragraphs 4, 5, and 6 of their affidavit, the applicants generalized the sequence of events that on 19<sup>th</sup> August, 2022 their counsel's family got an accident at Morogoro, and the counsels' family was admitted at Morogoro Regional Hospital. To support

their allegations they attached a photo which was marked as Annexure J2, as rightly pointed out by Ms. Catherine Annexure J2 is a mere photo, there is no proof that the counsel's family was involved in the said car accident since there was no any Hospital chic attached to the application to prove their allegations.

In addition, the issue of the accident did not involve the applicants but their counsel and the applicants' counsel did not file an affidavit to support the applicants' allegations which means the whole narration of the 1<sup>st</sup> applicant is mere words.

Regarding, the ground of illegality, the counsel for the applicants has raised the points of law from the bar, and the same is a mere narration of what was allegedly done by the trial tribunal. Therefore, I am convinced that the alleged illegalities have been raised through a submission from the bar, and what Mr. Ubaid did, through his submission, was to introduce points of law that were not specifically pleaded in the applicants' supporting affidavit.

Moreover, the grounds raised under paragraph 16 of the applicants' affidavit are not related to illegality rather the same are suitable grounds for appeal. At this juncture, the Court is more interested to look at the points of law which are on the face of the records. Therefore, what is stated in the applicants'

affidavit, in my considered view is mere averment that the application had been filed without undue delay with no further explanations, was not enough. As a result, the applicants have failed to show points of law that raise issues of general importance or a novel point of law. The reason for the delay advanced by the applicants were strongly opposed by the counsel for the respondents on account that the applicants have failed to account for the days of delay.

In consequence, thereto, I am in accord with the respondent's counsel submission that the applicants have failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file an appeal out of time.

In the upshot, the application is hereby dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 21<sup>st</sup> December, 2022.

  
A.Z.MGEYEKWA

**JUDGE**

21.12.2022

Ruling delivered on 21<sup>st</sup> December, 2022 in the presence of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants.

  
A.Z.MGEYEKWA

**JUDGE**

21.12.2022