

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 478 OF 2021

(Originated from Land Appeal No. 21/2011 at Kunduchi Ward Tribunal, the District Land and Housing Tribunal for Kinondoni at Mwannyamala, arising from Land Appeal No. 116 of 2014 of the High Court of Tanzania (Land Division) at Dar es Salaam before Honorable Nchimbi, Judge)

ADINANI KIMOMWE APPLICANT

VERSUS

GHARIB NASSORO RESPONDENT

RULING

Date of last Order 21.02.2022

Date of Ruling 18.03.2022

A.Z.MGEYEKWA, J

The Court's discretion is sought to grant an extension of time to lodge a Notice of Appeal against this Court decision in Land Appeal No. 116 of 2014. The application, preferred under the provisions of section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]. The application is

supported by the applicant's own affidavit in which grounds for extension of time are set out. The application was not opposed by the respondent who filed a counter affidavit deponent by Gharibu Nassoro, the respondent.

Ordinarily, the case was adjudicated by the Kunduchi Ward Tribunal whereas, the decision was in favour of the respondent and the respondent was ordered to compensate the appellant. Dissatisfied with the Ward Tribunal order to compensate the appellant, the respondent lodged an appeal to the District Land and Housing Tribunal in which Ward Tribunal compensation order to the appellant was overruled.

The applicant was aggrieved with the decision of the District Land and Housing Tribunal and decided to lodge his appeal to this court in Misc. Land Appeal No. 116 of 2016, the judgment was delivered on 30th March, 2016 whereas the applicant lost the appeal, hence this application before this court.

When the matter was called for hearing on 21st February, 2022 the applicant had the legal service of Mr. Amini Mshana, learned counsel and the respondent appeared in person, unrepresented. The application was argued by way of written submissions. Both parties complied with the court order. However, the applicant waived his right to file a rejoinder.

The applicant through his Advocate urged for this court to grant the applicant's prayers for the reasons that after the completion of Land Appeal No.116 of 2016 before this court on 30th March, 2016, he obtained a copy of Judgment on 5th April, 2016. He went on to submit that on 4th April, 2016, he applied for a Notice to Appeal to the Court of Appeal of Tanzania and later he appealed to the Court of Appeal in Civil Appeal No. 68 of 2018 in which the appeal was struck out on 20th August, 2021.

Mr. Amin went on to submit that on 24th August, 2021, they filed a letter requesting a copy of the ruling and on 3rd September, 2021, he received the said copy. The learned counsel continued to submit thereafter the applicant was busy instructing his Advocates to prepare the document for further steps, whereas, the documents were ready and on 10.09.2021, he lodged this application before this court, hence that there was no negligence, indolence, inaction or laggardness on delay. Mr. Amin contended that there was a lot of illegalities during the hearing of the case at the Ward Tribunal and the subsequent appeals both in the District Land and Housing Tribunal and this court.

In response, counsel for the respondent contended that the applicant has failed to account for days to file notice of appeal to the Court of Appeal immediately after the delivery of the Judgment of this court in Land Appeal

No. 116 of 2016 dated 30.03.2014, he cited the case of **Michael Lessani Kweka vs John Elisafye 1997 TLR 152 (CA)** which held that: -

"The Court had the power to grant an extension of time if sufficient cause had been shown for doing so."

He claimed that the Notice of Appeal had to be filed within 30 days from the date of the delivery of the Judgment and as reflected under Rule 83(2) of the Tanzania Court of Appeal (Amendment) Rules of 2019. He further contended that in granting an extension of time all relevant factors need to be considered in deciding how to exercise the discretion to extend time. He went on to submit that these factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal, and the degree of prejudice to the defendant if time is extended as it was held in the Case of **Mbogo v Shah [1968] EA**.

The learned counsel contended that the applicant has managed to account days as from the expiration of statutory time to file a Notice of Appeal. However, the applicant failed to account the 30 days from the date of delivery of the Judgment of this Court in Land Appeal No. 116 of 2014. Hence, the days from 30th March, 2016 to 28th April, 2016 was not accounted for. To buttress his contention, the learned counsel for the

respondent cited the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported).

Finally, the learned counsel for the respondent prayed for this court not to grant the application as no sufficient cause has been advanced by the applicant.

Having heard the contending submissions of the learned counsels for the applicant and respondent, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge a Notice of Appeal to the Court of Appeal.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v**

Amos David Kassanda & 2 others, Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

“It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.”

The applicant' Advocate has tried to convince this Court that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Msha v William Shija and Another** [1997] TLR 154. However, reading the applicant's affidavit, as rightly pointed out by the learned counsel for the respondent, the applicant has failed to account for the days of delay from 4th April, 2016, when the applicant lodged a Notice of Appeal to 20th August, 2021. In paragraphs 5, 6, and 7 the applicant narrated that he appealed to the Court of Appeal of Tanzania in Civil Appeal No. 68 'B' of 2018 without stating when exactly he filed the said appeal.

Moreover, the applicant has failed fails to account for every day of delay. He did not narrate as to what transpired from 4th April, 2016 to 20th August, 2021 when the appeal was struck out by the Court of Appeal of

Tanzania. In the case of **Bushiri Hassan v Latifa Lukio Mashayo**, (supra), the Court of Appeal of Tanzania held that:-

“Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay.”

Applying the above authority, I find that the appellant has failed to account for each day of delay, therefore this ground is demerit.

Regarding the issue of illegality, the legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

“Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of

*law should, as of right, be granted an extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**" [Emphasis added].*

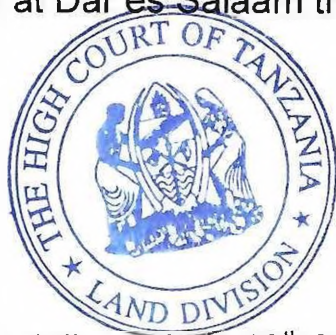
Applying the above authorities, it is clear that the ground of illegality that has been cited by the applicant on 11 of his affidavit, there are 12 points of law. At this juncture, I will only deal with illegalities that guide this court in granting an extension of time. The applicant has raised issues of necessary parties. In paragraph 11 (iii) he alleges that the Ministry of Lands and Human Settlements was a necessary party to the case since it surveyed the suit land. In paragraph 11 (iv) it was his view that the Ministry of Lands and Human Settlements was required to join the suit and defend his legality of its action against the applicant.

In my view, the raised illegality bears sufficient importance, the same meet the requisite threshold for consideration as the basis for enlargement of time and that this alone, weight enough to constitute sufficient cause for an extension of time. On his side, the learned counsel for the respondent did not respond to the illegality issue raised by the applicant.

In sum, based on the foregoing analysis I am satisfied that the above-ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge a Notice of Appeal within twenty-one days from today.

Order accordingly.

Dated at Dar es Salaam this date 18th March, 2022.




A.Z. MGEYEKWA
JUDGE
18.03.2022

Ruling delivered on 18th March, 2022 via audio teleconference whereas, the respondent was remotely present.




A.Z. MGEYEKWA
JUDGE
18.03.2022