

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

MISC. LAND APPLICATION NO. 742 OF 2021

(C/F Land Appeal No. 42 of 2020 delivered by Hon. Mango, J delivered on 4th June, 2021)

SHILILIANDUMI HUMPHREY MAKERE.....APPLICANT

VERSUS

BENEDICT JAMES TEMBA.....1ST RESPONDENT

REBECCA BENEDICT TEMBA.....2ND RESPONDENT

ELIA MAKALA MASANGYA.....3RD RESPONDENT

RUZIA JUMA ZIDADU.....4TH RESPONDENT

MUSSA JOHN.....5TH RESPONDENT

MR. EMMANUEL.....6TH RESPONDENT

Date of Last Order: 16/03/2022

Date of Ruling: 24/03/2022

RULING

MKAPA, J:

The applicant Shililiandumi Humphrey Makere has filed this application seeking for extension of time within which to file out of time leave to appeal to the Court of Appeal against the judgment and decree of this court in **Land Appeal No. 42 of 2020** delivered on 4th June 2021 by Hon. **Mango, J.** The application is supported by applicant's sworn affidavit and is brought under section 47 (1) and (4) of the Land Disputes Courts Act Cap 216 [R.E 2019], Section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E 2019] and Section 14 (1) of the Law of Limitation Act Cap 89 [R.E 2019]. Summons were duly served to all respondents but only the 1st and



2nd respondents entered appearance when this application was set for hearing and the court ordered to proceed ex- parte against the 3rd, 4th, 5th and 6th respondents.

Mr. Alipidius Philemon, learned advocate appeared for and represented the applicant, while the 1st and 2nd respondents had the services of Ms. Mary Lamwai also learned advocate. In their brief oral submissions each of the counsels adopted the contents of their affidavits to be part of their submissions. Mr. Philemon averred that on 6th July 2021 a similar application was filed by the applicant but on 2nd September 2021 when the matter came up for mention before Hon. **Makani, J**; the applicant prayed to withdraw the application with leave to re-file due to some irregularities contained in the application. Leave was granted subject to limitation.

He further submitted that from the 2nd to 3rd September 2021 the applicant's counsel was in the process of re-filing and finally the application was filed on 6th September as 4th and 5th September fell on a weekend. That; the application was filed online on 7th September 2021 and approved on 8th September 2021, and on 9th September 2021 the application was presented before the Court for filing. He added that, the application was scheduled for hearing on 22nd November 2021 before Hon. **Msafiri J**,

and ruling delivered on 10th December 2021 in which the application was struck out for being incompetent after being filed under a wrong provision of the law. He went on explaining that as 11th and 12th December fell on a weekend the applicant's counsel started processing this application on 13th December 2021 while awaiting for this court's drawn order for purposes of attaching the same with the application.



Furthering his submission, he submitted that, on 15th December 2021 the said Order was supplied to the applicant and he promptly filed the application on 16th December 2021. That; the same was approved on 21st December 2021 and hard copies were supplied to the applicant on 22nd December 2021. It was Mr. Philemon's submission that the reason for delay was technical as opposed to actual delay since the first application was filed timely and withdrawn for containing irregularities which resulted into the present application becoming time barred. He went on submitting that, technical delay is sufficient ground for extension of time as was held in the case of **Fortunatus Masha Vs. William Shija and Another (1997) TLR 154, CAT**. He narrated further that, the applicant has been in and out of the court's corridors searching for justice and in itself is also sufficient ground for extension of time. He relied on the decision in **Royal Insurance Tanzania Limited Vs. Kiwengwa Strand Hotel Limited, Civil Application No. 111 of 2009, CAT at Dar es Salaam** at page 16; and finally prayed for the application to be allowed.

Ms. Lamwai counsel for the 1st and 2nd respondent principally resisted the application. She submitted that the counsel for the applicant had failed to disclose the duration of the delay thus unable to account for each day of the delay. She denied the respondents to have been aware of the application which was withdrawn on 2nd September 2021 due to irregularities as alleged by the counsel for the applicant as they were not served with the said application.

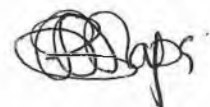
Countering the application Ms. Lamwai submitted further that the applicant's counsel failed to prove that he did request for the ruling and order of this court which he alleged to have been supplied to the applicant on 15th December 2021. She contended that, just like any other judicial



officer, she has been involved in filing online and normally approval hardly takes a day though the applicant alleged that it took long for him to receive online approval without any proof to that effect such as copies of print out. She added that, the applicant's counsel failed to disclose irregularities which had resulted into the applicant's initial application to be withdrawn. It was her view that the withdrawal was a result of applicant's negligence. She distinguished the case of **Fortunatus Masha** (*supra*) cited by the applicant's counsel from the facts of this application as **Masha's** case involved an application for extension of time within which to lodge an appeal after the original appeal was struck out for being incompetent for missing one document which was not attached unlike in the present application in which the applicant did not file his application timely thus cannot be treated as irregularity because of citing wrong provision of the law rather it is applicants negligence.

As regards the case of **Royal Insurance** (*supra*) Ms. Lamwai submitted that the same is irrelevant to the present application. Finally, she maintained that the applicant failed to show sufficient cause to warrant extension of time because **first**; the application has not been brought promptly; **second**; there is absence of valid explanation on the exact number of days of delays; **third**; there is lack of diligence as any diligent advocate after prayer for re-filing was granted, he should have taken into account the issue of limitation. **Lastly** she prayed for the application to be dismissed with costs.

Re-joining his submission Mr. Philemon reiterated what he had earlier submitted in submission in chief and maintained that the applicant had shown good cause for the delay including accounting for each day of delay. Further that, the respondents were aware of the first application which was



later withdrawn as they were served on 26th July 2021 and the same was filed on time. Finally, he prayed for the application to be allowed.

I have heard submissions by counsel for both parties for and against the application and the question for consideration is whether the applicant has shown sufficient cause to warrant this court to exercise its discretionary powers to extend time.

It is a trite principle of the law that an extension of time is entirely upon the discretion of the court to grant it or not to grant and the same must be confined to the rules of reason and justice.

The above legal position is enunciated in numerous authorities including the decision in the case of **Lyamuya Construction Co. LTD Vs. the Registered Trustees of YWCA of Tanzania Civil Application No. 2 of 2010 CAT** (unreported) which set a guidelines in determining good cause in granting extension of time namely;

- (i) The applicant must account for all period of delay
- (ii) The delay should not be inordinate,
- (iii) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and
- (iv) If the Court feels there are other sufficient reasons such as the existence of a point law of sufficient importance such as the illegality of the decision sought to be challenged.

A reading from the above authority it is plain clear that for extension of time to be considered by the Court, applicant has to show good cause and further that, not only there has to be sufficient reasons for the delay but



the reasons have to be sufficient enough to extend time [See; **R.Yona Kaponda & 9 others [1985] T.L.R 84.**

In the instant application the applicant is seeking extension of time to appeal against the judgment and decree of this Court delivered on 4th June 2021. He averred that, he timely filed an application for leave to appeal to the Court of Appeal on 6th July 2021 (**Misc. Land Application No. 325 of 2021**). On 2nd September 2021 he prayed to withdraw the same with leave to refile having discovered the said application contained irregularities by placing one Elia Makala as the 1st applicant instead of being 1st respondent. Their prayer was granted subject to limitation. The applicant then filed a fresh application on 7th September 2021 (**Misc. Land Application No. 471 of 2021**) and the application was scheduled for hearing on 22nd November 2021. Ruling of the said fresh application was delivered on 10th December 2021 and the application was struck out for being brought under wrong provision of the law which the applicant considered it as an irregularity thus warrant for extension of time by this court. However, my view is, wrong citation of the provision of the law does not amount to irregularity rather lack of diligence on the part of the applicant as had they been properly filed both applications namely; **Misc. Land Application No. 325 of 2021** and **Misc. Land Application No. 471 of 2021**, the application for extension of time would have been determined on merit.

The applicant had also contended that the delay was occasioned by the delay in obtaining Court's Order which had struck out **Misc. Land Application No. 471 of 2021** that, he was supplied with the same on 15th December 2021 and managed to file this application on 16th September. Impliedly, the period requisite for obtaining the decree/order intended to be appealed from shall be excluded.



I find it opportune to reproduce the relevant provision on limitation named, section section 19 (2) of the Law of Limitation Act (the LLA) Cap 89 which provides;

"19 (2) In computing the period of limitation prescribed in the appeal, an application for leave to appeal or an application for review of judgment, the day on which the judgment complained of was delivered and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed shall be excluded."

In recent decision by the Court of Appeal in **Valerie Mcgovern Vs Salim Farkrudin Balal, Civil Appeal No. 386 of 2019**, CAT at Tanga (unreported), the Court had widened the scope of section 19 (2) where at page 11 of the typed judgment with **lucidity** stated;

".....However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purposes of appeal"[**Emphasis added**]

In his submission the counsel for the applicant averred that on 13th December 2021 he was preparing this application for submission while awaiting to be supplied with copy of the Order in **Misc. Land Application No. 471 of 2021**. However, he failed to proof the fact that he did actually request the same in writing as rightly argued by the counsel for the 1st and 2nd respondents. As a result of which the 14th and 15th day of December are left unaccounted.

The Court of Appeal in **Dar-Es-Salaam City Council Vs. Group Security Co. Ltd. Civil Appeal No. 234 of 2015 (Unreported)** has crystallised the issue of accounting for each day of delay that;



*As a matter of general principle, it is always in the discretion of this Court to grant extension of time.....but the stance which this Court has consistently taken is that in an application for extension of time, the **applicant has to account for every day of delay**" (emphasis added)*

The above legal authority was re-affirmed in numerous decisions including in **Motto Matiko Mabanga Vs. Ophir Energy PLC and Two others, Civil Application No. 463/01 of 2017 (Unreported)** and **Bushiri Hassan V. Latifa Lukio Mashayo, Civil Application No. 03 of 2017** in which the Court observed;

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

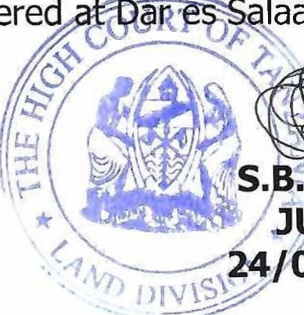

More so, in order to avoid abuse of Court procedures in **Salome Mussa Lyamba Vs K.K (T) Ltd. Labour Division, 2012 LCCD 198**, the court had this to say;

".....No valid reason in granting this application as it would amount to an abuse of the Court procedures that limitation is there to ensure that a party does not come to court as and when he chooses"

For the reasons discussed above, I am satisfied that the applicant has failed to demonstrate good cause for the delay to warrant extension of time. Consequently, the application is dismissed with costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 24th day of March 2022.



S.B.MKAPA
JUDGE
24/03/2022