

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 702 OF 2021**

(Originating from Land Appeal No.219 of 2017 before Hon, Maghimbi, J)

YAHAYA RAMADHANI (The administrator of the
Estate of the late Abdallah) **APPLICANT**

VERSUS

SIWAJUI JUMA **1ST RESPONDENT**
HAMISI OMARY RAJABU **2ND RESPONDENT**
SISTI ATANASI **3RD RESPONDENT**
HAMISI NASORO **4TH RESPONDENT**
JAMES MKUDE NGUBI **5TH RESPONDENT**
ALEX KIKWAJU **6TH RESPONDENT**
ATHANASI YUSTINI **7TH RESPONDENT**
DARU DANYERI **8TH RESPONDENT**
RAISI SAIMON **9TH RESPONDENT**
CLEMENCE ALEX KIWAJU **10TH RESPONDENT**
ABIASI KALUONJE **11TH RESPONDENT**
GODWIN SAID **12TH RESPONDENT**
JUSTIN MAIKO **13TH RESPONDENT**
JOHN KOJONGO **14TH RESPONDENT**
MOHAMED R. SINDANO **15TH RESPONDENT**

RULING

Last order: 20.01.2022

Ruling date: 25.01.2022

A.Z.MGEYEKWA, J

This is an omnibus application whereas the applicant urged this court to exercise its discretion under section 11 (1), (c) of the Appellate

Jurisdiction Act, Cap. 141 [R.E 2019]. The applicant prays for extension of time to file a Notice of Appeal against the Judgment of Hon. S. Maghimbi, J in Land Appeal No. 219 of 2017. He also prays for extension of time to file an application for certification on point of law. The application is supported by an affidavit deponed by Yahaya Ramadhani, the applicant. The respondents feverishly opposed the application. In a joint counter-affidavit sworn by all respondents.

When the matter was called for hearing before this court on 29th December, 2021, the applicant and respondents appeared in person, unrepresented. By the court order and consent by the parties, the application was argued by way of written submissions whereas, the applicant's Advocate filed his submission in chief on 7th January, 2022 and the respondent filed his reply on 14th January, 202 and the applicant's Advocate filed a rejoinder on 19th January, 2022.

In his submission, the learned counsel for the applicant opted to withdraw his second prayer on an extension of time for filing an application on certification on point of law. Mr. Mohamed Nyundo, the learned counsel for the applicant started to attack the respondents' joint counter affidavit. He claimed that counter affidavit contravenes Order XIX Rule 3 (1) of the Civil Procedure Code Cap.33 [R.E 2019] since the same on paragraphs 2, 6, 6.2, and 6.3 contains arguments. It was his view that the same was

supposed to be raised as points of law. Mr. Nyundo went on to argue that the joint counter affidavit contravenes section 4 of the Oaths and Statutory Declarations Act, Cap. 34 [R.E 2019]. He claimed that the affidavit termed all respondents as Christians and they took oaths and swear in the joint counter affidavit while the 1st, 2nd, 4th and 15th respondents are Muslims. He urged this court to expunge the offensive paragraphs from the record for being incurably defective.

Submitting on the application, Mr. Nyundo submitted that the applicant's application contains 3 prayers. In his submission, Mr. Nyundo prayed to abandon part of his prayers in the Chamber Summons, the second prayer for extension of time to lodge an application for certification on point of law. To support his decision he invoked Order XXIII Rule (1) and (2) and (b) of the Civil Procedure Code Cap. 33 [R.E 2019] for the reason of formal defect.

The learned counsel for the applicant went on to submit that for a party to make an application for certification on point of law, requires the case to originate from the Ward Tribunal. It was his argumentation that this matter did not originate from the Ward Tribunal. To beef up his averment he referred this court to Order XXIII 1 (1) and (2) (a) and (b) of the Civil Procedure Code Cap.33 [R.E 2019].

Concerning the application for extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania, the learned counsel for the applicant submitted that the applicant was aggrieved by the decision of Hon. Maghimbi, J in Land Appeal No.219 of 2017. Hence he successfully filed an application for leave to appeal to the Court of Appeal in Misc. Land Application No.45 of 2020. He added that being a layperson, the applicant always was appearing in person, hence his Misc. Land Application No. 609 of 2020 was struck out for being prematurely filed since there was no Notice of Appeal lodged before this court. It was his submission that for that reason, the applicant decided to file the instant application. Mr. Nyundo submitted that for the interest of justice the applicant urge this court to extend the time to file a Notice of Appeal to allow the applicant to pursue his case.

The learned counsel for the applicant continued to argue that the applicant's delay was a technical delay. Mr. Nyundo fortified his submission by referring this court to the case of **Fortunatus Msha v William Shija and Another** [1997] TLR 154.

On the strength of the above submission, Mr. Nyundo beckoned upon this court to extend time to file a Notice of Appeal out of time. Stressing his point, Mr. Nyundo urged this court to expunge the respondents' joint counter affidavit from the record.

The Respondents opposed the application. Mr. Oduor, learned counsel for the respondents started by stating that the applicant in his first allegation has not demonstrated how the alleged paragraphs 2, 6, 6.2, and 6.3 of the respondents' counter affidavit contravene Order XIX Rule 3 (1) of Cap. 33 [R.E 2019]. Concerning the second allegation, Mr. Oduor argued that in the interlocutory part of the respondents' counter affidavit the respondents have indicated that they profess Christian faith.

Submitting on the application, the learned counsel for the respondents argued that the applicant has not stated sufficient reasons to warrant the grant of extension of time. Supporting his submission he referred this court to the case of **Jackson Temba v Magreth Cosmas**, Misc. Civil Application No, 742 of 2018 (unreported) whereas the court listed three conditions which are required to be observed by a court in granting extension of time to wit:

- a) Applicant must account for all the period of delay
- b) Delay should not be ordinate
- c) Applicant must show diligence, and not, negligence or slowness in prosecuting the act that he intends to take.

It was Mr. Oduor submission that the applicant has failed to move this court to exercise its direction in his favour. He argued that the applicant in

his submission in chief has failed to satisfactorily explain with tangible evidence the reasons for such ordinate delay of six months, counting the days after the Misc. Land Application No. 609 of 2020 was strike out. He further submitted that the applicant in his affidavit has not stated sufficient reasons of delay. Stressing his point, Mr. Oduor vehemently contended that the applicant has failed to satisfactorily explain reasons for such grave ordinate delay of almost two years as well as counting for every day of delay after the delivery of Land Appeal No. 219 of 2017 before Hon. Maghimbi, J.

The learned counsel for the respondents did not end there, he contended that the applicant is playing delaying tactics and distorting the course of justice and ultimately deny the respondents the rights to enjoy the fruits of the judgment which was entered in their favour.

In conclusion, the learned counsel for the respondents beckoned upon this court to dismiss the application with costs.

In his brief rejoinder, the learned counsel for the applicant reiterated his submission in chief. He insisted that the respondent's counter affidavit contains argumentative paragraphs and opinions. To support his position he referred this court to Order XIX Rule 3 (1) of the Civil Procedure Code Cap.33.

On the strength of the above submission, Mr. Nyundo argued this court to grant the applicant's application to lodge a Notice of Appeal out of time.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavit and counter affidavit, the issue for our determination is ***whether the application is meritorious.***

Before generally canvassing the grounds of the applicant's application for extension of time, I have dispassionately considered the so called preliminary points of objection. With due respect to both learned counsels, I do not think most of what they term as preliminary points of objection has been raised at the right instant. Both parties were supposed to follow proper procedure, in case they wanted to challenge the application at hand and the counter affidavit, then the learned counsels were supposed to challenge the same by raising a preliminary objection (s) before starting hearing the instant application on merit.

For the aforesaid reasons, parties' points of law are disregarded. Therefore, I proceed to determine the application on merit.

This court has noted that the applicant's application has lumped two prayers; extension of time to file a Notice of Appeal and an extension of time to file an application for certification on point of law. However, he has argued this court to abandon the second prayer of extension of time to file an application on certification on point of law.

In the application of extension of time to file a Notice of Appeal, the position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. However, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

The Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of

2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit. Mr. Nyaundo has shown the path navigated by the applicant in his affidavit. he stated that the applicant's grounds are technical delay that he lodged an application for leave to appeal in Misc. Land Application No. 45 of 2020 against the decision of this court the same was found to be filed prematurely since he did not lodge a Notice of Appeal. Therefore the same was struck out for being incompetent. Then the applicant filed a Misc. Land Application No. 486 of 2021 the same was withdrawn with leave to refile and his prayer was granted.

As amply submitted by Mr. Nyundo, he has convinced this Court to find that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra). Since the learned counsel for the applicant is in unison with respect to technical delay, I find it proper to determine the issue whether the delay in the instant application qualifies as a technical delay. In my respectful view, the issue of technical delay is a sufficient ground for extension of time, however, the applicant is required to account for each day of delay.

The applicant in his affidavit did not state when the Misc. Land Application No. 486 of 2021 was struck out nor did he account for the days of delay. Even the learned counsel in his written submission did not account for the days of delay. In accordance with the applicant's annexure attached to the application the Misc. Land Application No. 609 of 2020 was delivered on 18th June, 2021, and the applicant file this application on 7th December, 2021. There is no any promptness in lodging the instant application before this court and the days of delay was not accounted for.

It is a trite law that if a delay is involved then the applicant is required to show good cause which includes the reasons for the delay and to account for each day of delay. This requirement got a broadened scope in the epic decision of the Court of Appeal Tanzania in **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. Also the same was held by the Court of Appeal in the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) 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 have to say that the applicant has not accounted for each day of delay, therefore, the applicant's ground on technical delay cannot hold water.

In sum, I hold that the applicant has not passed the legal threshold set for the extension of time. Accordingly, the application is hereby dismissed with costs.

Order accordingly.

Dated at Dar es Salaam this date 25th January, 2022.




A.Z. MGEYEKWA
JUDGE
25.01.2022

Ruling delivered on 25th January, 2022 in the presence of the applicant and Mr. Daniel Oduor, learned counsel for the respondent,




A.Z. MGEYEKWA
JUDGE
25.01.2022