

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 541 OF 2021**

(Arising from Land Appeal No. 30 of 2020 before Hon. Maghombi)

MARIAM KAIJAGE APPLICANT

VERSUS

RHOBI CHACHA RESPONDENT

RULING

Date of last Order: 13.05.2022

Date of Ruling: 19.05.2022

A.Z.MGEYEKWA, J

This Court is called upon to grant an extension of time within which to file an application for leave which will enable the applicant to apply for leave to appeal to the Court of Appeal of Tanzania. At the centre of the impending appeal is the decision of the Court (Hon. Maghimbi, J) in Land Appeal No.

30 of 2020, in which the District land and Housing Tribunal allowed the respondent's appeal. The losing party in the appeal, complains that he delayed obtaining the copies of the impugned decision. The application is supported by the affidavit of Mariam Kaijage, setting out grounds for extension of time. The application is strongly opposed by the respondent. Through a counter-affidavit sworn by Mr. Justin M. Chacha, learned counsel.

The application was disposed of through written submissions, preferred in conformity with the schedule drawn by the Court, and fully adhered to by counsel for the parties. I thank both learned counsels for their concise and focused written submissions.

In this matter, Mr. Bitaho B. Marco, learned counsel represented the applicant, while Mr. John Msuya's services were enlisted by the respondent.

In his written submission, Mr. Marco began by acknowledging the fact that the grant of extension of time is conditioned on the applicant to account for each day of delay. Mr. Marco submitted that the applicant prays to this court to invoke the overriding principle to bless the present application. He added this principle requires all courts, advocate, and parties to be just expeditious and proportionate in a civil dispute. He stated that the principle was put to

test in the case of **Yakob Magoigo Gichere v Peninah Yusuph**, Civil Appeal No. 55 of 2015 (unreported).

The counsel for the applicant continued to submit that it is in the interest of justice that this application is granted so that the applicant can enjoy his constitutional right to be heard. The counsel for the applicant drew the Court's attention to the decisions of **Fortunatus Masha v William Shija** (1997) TLR 154. Insisting, Mr. Marco stated that the applicant humbly submit that it is in the interest of justice that this application be granted so that the applicant can enjoy his constitutional right as provided under Article 107A (2) (e) of the Constitution of the United Republic of Tanzania.

Mr. Msuya valiantly opposed the applicant's contention. He took the view that sufficient reason has been advanced for the Court to grant an extension of time. He submitted in the entire submission of the applicant, the main issue to be discussed are two to wit; extension of time to be granted, a duty to account for each day of delay should be invoked, and the issue of avoiding technical delay, unfortunately, all of them were deficiently argued. Mr. Msuya argued that in the issue of whether the applicant has reasonably caused and grounded for extension of time to be granted, he contended that passing through the applicant's affidavit and submission, there is at any point the

applicant has stated good reason or sufficient cause which led her to delay to file her application within time. He went on to submit that it is settled principle that in any application of an extension of time one who seeks an extension of time is required to show reasonable cause for the delay. He stated that firstly, the applicant in his affidavit stated that he filed Misc. Land Application No. 160 of 2021 for leave to appeal which was struck out. It was his view that it was the applicant's negligence that made this court strike out the application.

He went on to submit that secondly, the applicant claimed that he was supplied with a certified copy of the ruling and drawn order on 16th September, 2021 the reason which lacks merit since the applicant did not take the trouble to prove her allegation before this court. To buttress his contention he cited the cases of **Attorney General v Tanzania Ports Authority and Another**, Civil Application No. 2016 (unreported), and **Kalinga & Co Advocates v NBC** (2006) TLR 235.

The learned counsel did not end there, he submitted that the applicant has not accounted for the days of delay. He stated that the applicant prays for this court to invoke the requirement of account each day of delay without any reason and mislead the court by citing the case of **Yakobo Magoiga** (supra)

in which the cited case discussed the concern issue of overriding principle and procedural technicalities and the matter at hand does not involve any issue concerning overriding objection. He claimed that the applicant has not proved the delay of every single day of delay. Fortifying his position he referred this court to the case of **Zachari J. Mwangosi v Gertrude Z. Mwangosi**, Misc. Civil Appeal No. 676 of 2019 (unreported) the court cited with approval the case of **Al Imran Investment Ltd v Print Park Tanzania Ltd & Martin Shinyanga**, Civil Case No. 125 of 1997 (unreported).

The counsel submitted that the applicant has failed to show and prove to the court her whereabouts during all those days to file his application thus, by any chance he cannot enjoy the mercy of this court. He added that this position was settled by this court in the case of **Ramadhani J. Kichwani v TAZARA**, Application No. 401 of 2018 (unreported). He added that the applicant was supposed to attach an affidavit of the court officer who supplied those documents to prove whether the judgment and drawn order were issued to him on 16th September, 2021. Supporting his submission he cited the case of **Tanzania Mining Co. Ltd v Zacharia Amani T/A All Gold Co & Another**, Civil Application No. 415 of 2018 (unreported).

On the strength of the above submission, the learned counsel for the respondent urged this court to strike out the entire application with costs.

So much for the submissions of the learned counsel for both parties. The ball is now in my Court. The parties' rival submissions raise one key question. This is as to *whether or not the application has passed the threshold for its grant*.

I wish to start by underscoring, first, that it is settled law that applications of this nature will only succeed upon the applicant showing reasonable or sufficient cause for the delay. This is a requirement of section 14 of the Law of Limitation Act, Cap. 89 under which the present application has been made. To grant or not to grant extensions is within the unfettered discretion of the Court. This unfettered discretion is only subject to the obvious fetter of all discretions; that is, it must be exercised judicially the same was held in the cases of **Lalji Gangji v Nathoo Vassanjee** [1960] 1 EA 315 and **Noormohamed Abdulla v Ranchhodbhai J. Patel & another** [1962] 1 EA 447.

Moreover, in order to establish that the delay was with sufficient cause, the applicant must not only demonstrate reasons for the delay but also satisfactorily declare and explain the whole period of delay to the Court. In

other words, the applicant must account for each day of delay. The substance of the matter and, in this respect, the legal position is that, an extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, such discretion must be on a proper analysis of the facts, and application of law to facts, the grant of which is done upon satisfaction by the applicant through the presentation of a credible case upon which such discretion may be exercised.

In the matter at hand, the applicant has failed to account for each day of delay. The applicant complained that her application for leave of appeal to the Court of Appeal was struck out on 25th March, 2021. She also stated that she received the certified copies of the ruling and drawn order on 16th September, 2021. However, there is no any proof to support his assentation. I have perused the affidavit and written submission and noted that there is no explanation as to why the applicant took more than 22 days to lodge the instant application which was lodged on 7th October, 2021 before this court.

Encapsulating the foregoing position, the Court of Appeal of Tanzania made the following position in the cases of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported)

which was delivered in May, 2019 and the case of **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it 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."

The applicant is claiming that the issuing of the judgment and decree copies was done tardily, despite a request for the said copy. The learned counsel for the applicant in his submission admitted that the applicant was duty-bound to account for the days of delay, surprisingly, he urged this court to invoke the overriding principle to bless the application. It is worth noting that the overriding principle is inapplicable in every situation. In the matter at hand, the applicant was required to account for the days of delay and raise ground (s) of illegality which was not the case in the matter at hand.

The argument by Mr. Msuya, in opposition to this contention, is threefold. One, that the applicant has not shown good cause, two, account for each day of delay; and three, that the allegation of following up on the matter was not backed up by any supplementary affidavit to whom the applicant alleged being supplied with the copies of Ruling drawn orders. I fully subscribe to the

submission of the learned counsel for the respondent that the applicant has failed to account for every day of delay.

In the interest of clarity, I have read the case of **Yakobo Magoiga** (supra) and **Fortunatus Masha** (supra). In **Yakobo's** case, as rightly stated by Mr. Msuya, the issue for discussion was the overriding principle and procedural technicalities and in the case of **Fortunatus Masha** (supra), the case is concerned with constitutional rights. In my view, this cited case is distinguishable from the instant case. In the instant case, unlike the cited cases, the main concern is an application for an extension of time which requires the applicant to state good cause and account for each day of delay.

In sum, based on the foregoing analysis I am satisfied that the application before this court is devoid of merit and the same is hereby dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 19th May, 2022.



A.Z.MGEYEKWA

JUDGE

19.05.2022

Ruling delivered on 19th May, 2022 via audio teleconference whereas the respondent was remotely present.




A.Z.MGEYEKWA

JUDGE

19.05.2022