

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 81 OF 2022**

(Arising from Misc. Land Application No. 476 of 2020, High Court Land Division, Originating from the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 244 of 2015)

LATIFA AMON MAHAVA 1st APPLICANT

**PAUL GASPER MREMA (Administrator of the Estate
Of the late GASPAR PAUL MREMA 2ND APPLICANT**

VERSUS

**KULWA YAMSEBO (Administrator of the Estate of the
late CHARLES YAMSEBO RESPONDENT**

RULING

Date of Last Order: 27.04.2022

Date of Ruling: 27.05.2022

A.Z. MGEYEKWA, J

This is an omnibus application whereas the applicants are praying for an extension of time to file an application for leave to appeal to the Court of Appeal of Tanzania and an extension of time to file a Notice of Appeal out

of time. The Application is brought under the provisions of section 41 of the Land Disputes Courts Act, Cap. 216 [R.E 2019].

A brief history of this suit is as follows; in 2015, the respondent instituted a suit against the applicants in Application No. 244 of 2015 at the District Land and Housing Tribunal for Ilala at Ilala before Hon. M. Mgulambwa, Chairman. The Judgment was delivered on 29th November, 2019 in favour of the respondent who was declared a legal owner of the suit property while the applicants were declared trespassers.

Being aggrieved by the decision of the District land and Housing Tribunal the applicants filed a Misc. Land Application No. 476 of 2020 before this court for an extension of time to appeal out of time against the decision in the District Land and Housing Tribunal. The said application for extension of time before this court was dismissed on 29th November, 2021 before Hon. Makani J. on the ground that the applicant failed to show sufficient good cause for the days of delay. Dissatisfied, the applicants lodged the present application.

When the matter was called for hearing on 27th April, 2022 this court ordered the parties to file written submissions whereas the applicants filed their written submission on 12th May, 2022, and the respondent filed a reply on 19th May, 2021 and the applicants filed their rejoinder on 24th May, 2022.

In his submission, Mr. Manase Goroba, learned Advocate adopted the affidavit deponed by both applicants and submitted that the applicants are seeking an extension of time to lodge an application for leave to appeal out of time and a Notice of Appeal. He submitted that the delay was not caused by the applicants' negligence but the applicants were not aware of the court decision which was delivered on 29th November, 2021 until on 11th February, 2022 when they became aware of the said ruling in which time for appeal already lapsed.

The learned counsel for the applicant went on to submit thereafter, the applicants immediately started the process of obtaining a copy of the ruling and subsequently lodged this application before this court on 4th March, 2022 without any further delay.

He further stated that the reason for lodging an application for leave to appeal is because of the Misc. Land Application No. 476 of 2020 before Hon. Makani, J. was dismissed on technicalities on the default and misrepresentation of the applicants' Advocate who did not inform the applicants what transpired in court, the applicants realized later through the court process server who notified the applicants that there was an application for execution proceedings in respect to Misc. Land Application No. 463 of 2020. He urged this court to grant the applicants' application

for an extension of time to file a Notice of Appeal and leave to appeal to the Court of Appeal of Tanzania without costs.

In reply, the respondent contended that the application contains two distinct applications contrary to Order XLIII Rule 2 of the Civil Procedure Code Cap 33 [R.E. 2019], hence that this application is omnibus.

She further contended that the applicants have not substantiated any sufficient good cause for grant of the application. The respondent further stated that the applicants have failed even to account for each day delayed from 29th November, 2021 when the ruling was delivered to 4th March, 2022 when the instant application was lodged. To bolster her submission, she cited the case of **Tanzania Rent Car v Peter Kimuhu**, Civil Application No. 226/01 of 2017, where the Court 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 been taken.

In conclusion, the respondent urged this court to dismiss the application with costs for lack of merit.

In their brief rejoinder, the applicants' counsel, reiterated his submission chief and insisted that the application is not omnibus because the application is interrelated, it was his view that once the application is

separated it might be signed two distinct Judges and result in two different decisions would amount to multiplicity of cases.

Having carefully considered the submissions made by the learned counsel for the applicant and the respondent in their written submission and examined the affidavits and counter-affidavits, the issue for our determination is ***whether the applicant is meritorious.***

In determining the applicant's prayers, I want to make it clear that this court can determine the combination of prayers as stated in the case of **Tanzania Knitwear Ltd v Shamshu Esmail** (1989) TLR 48, Mapigano, J (as he then was) that:-

"In my opinion, the combination of the two applications is not bad in law. I know of no law that forbids such a course. Courts of the law abhor multiplicity of proceedings. Courts of law encourage the opposite."

Similarly, the Court of Appeal of Tanzania in the case of **MIC Tanzania Ltd v the Ministry for Labour and Youth Development and the Attorney General** Civil Appeal No. 103 of 2004 Dar es Salaam (unreported), the Court of Appeal of Tanzania held that:-

"Unless there is a specific law barring the combination of more than one prayer in one chamber summons, the courts should

encourage this procedure rather than thwart it for fanciful reasons.'

Additionally, this Court in the case of **Pride Tanzania Limited v Mwanzani Kasatu Kasamia**, Misc. Commercial Cause Division Hon. Mwambegele, J. (as he then was) held that:-

"In the case at hand the applicant has combined two applications in one: an application for, first, an extension of time within which to apply to this court stay of the decree of the court of resident Magistrate of Dar es salaam at Kisutu dated at 04/05/2015 and secondary, upon grant of extension of time, for a stay of execution of the said decree. I think the course taken by the applicant is, in the light of the Tanzania Knitwea, and Mic Tanzania cases, quite in order. In the circumstances of Tanzania where the vision of the Judiciary is to administer justice effectively and timely, it will not be inappropriate for courts of law to encourage a multiplicity of proceedings because this course would defeat the very goal for which the vision is intended to achieve,

In view of the reasoning of this court [in] Tanzania Knitwear and Gervas Mwakafwila to which I subscribe in further view of the biding authority of MIC Tanzania discussed above I wish to recap that while omnibus application which is composed of two or more unrelated applications may be libeled omnibus and consequently

struck out for being incompetent, an application composing two or more application of which are interrelated is allowable at law.”

Applying the above authority in the instant application, I find that the two prayers are properly before this court as they are not diametrically opposed to each other, but one easily follows the other. Once an extension of time is granted for the applicants to file a Notice of Appeal then the applicant will lodge an application for leave to appeal to the Court of Appeal of Tanzania. Therefore, I proceed to determine all two prayers and find out if the applicants have adduced sufficient evidence to move this court to grant what they sought.

In addressing the both prayers, the central issue for consideration and determination is whether sufficient reasons have been advanced to warrant the extension of time sought by the applicant. I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, 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.

In the matter at hand, I have noted that the learned counsel for the applicants was negligent and not serious in handling the applicants' matter. He is the one who was instructed by the applicants to handle the case, unfortunately, he appointed another Advocate to hold brief without making follow-ups to find out what transpired when the matter was before this court.

In the situation at hand, the applicants relied much on her advocate's service whereas they were not aware that the application before this court was dismissed on 29th November, 2021. I have noted that the applicants' dilatoriness in taking action was as a result of negligent acts of their

counsel. In paragraph 7 of the affidavit, the learned counsel informed the applicants that this court did not deliver its judgment. In paragraphs 8 and 10, the applicants have narrated how they realized that their case was dismissed. In paragraph 12, the applicants applied for copies of the ruling of the court there is evidence of a handwritten letter dated 11th February 2022 showing efforts taken and interest in filing an appeal. The Court of Appeal of Tanzania in **Zuberi Mussa v. Shinyanga Town Council**, the Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported), held that:-

"... minor mistakes or lapses or oversight which do not amount to lack of diligence or gross negligence on the part of the applicant's counsel may constitute the reason for enlargement of time."

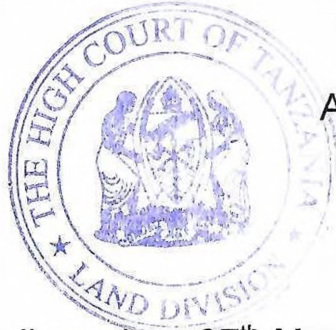
The applicants took efforts in filing the instant application, they were in receiving end of the lapse and errors committed by their counsel. Therefore, it is not prudence in the circumstances at hand were such lapses did not have the effect of banging a door on the applicants and deny them another chance to challenge the decision of this court. It is my view that in the absence of any lack of diligence or negligence on the part of the applicants, this is an excusable delay in respect of which the prayer for extension of time is justified.

For the sake of clarity, I have read the cited case of **Ngao Godwin** (supra) the court discussed the negligence of the applicant. In the circumstance at hand, the negligence was caused by their learned counsel and not the applicants. Therefore, in the interest, of justice, I find that the applicants have adduced sufficient reasons for their delay.

In consequence, this application succeeds. The applicants to file a Notice of Appeal and an application for leave to appeal to the Court of Appeal of Tanzania. No order as to costs.

Order accordingly.

Dated at Dar es Salaam on this 27th May, 2022.





A.Z. MGEYEKWA

JUDGE

27.05.2022

Ruling delivered on 27th May, 2022 in the presence of the applicant and the respondent.




A.Z. MGEYEKWA

JUDGE

27.05.2022