

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 730 OF 2021

(Arising from Land Appeal No. 248 of 2020)

SELEMANI SAIDI KUWI.....APPLICANT

VERSUS

LORENI RAMADHANI.....RESPONDENT

Date of last order: 20/4/2022

Date of Ruling: 10/5/2022

RULING

A. MSAFIRI, J.

On the 16th day of December 2021, the applicant lodged an application in this Court by way of chamber summons under Section 11 (1) of the Appellate Jurisdiction Act CAP 141 RE 2019 (the Act), for the following orders;

- i. *That this Honourable Court be pleased to extend time for filing the notice of appeal against the judgment of Makani, J, in Land Appeal No. 248 of 2020.*

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- ii. *That this Honourable Court be pleased to extend time for filing an application for leave to appeal to the Court of Appeal.*
- iii. *Any other relief that this Honourable Court may deem fit and just to grant.*

The application is supported by an affidavit affirmed by SELEMANI SAIDI KUWI the applicant herein.

On 14th March 2022, this Court ordered the application be disposed of by way of written submissions, whereby the submissions in chief by the applicant ought to have been lodged on or before 28th March 2022. The reply submission by the respondent ought to have been lodged on or before 11th April 2022, but the reply submission by the respondent was lodged on 12th April 2022 well beyond the prescribed time, hence as the respondent's reply submission has been lodged out of time and there was no prayer for leave to extend the time, the same will be disregarded.

Before going to the merits of the application, a brief background is necessary. The applicant herein instituted Land Application No. 308 of 2019 at the District Land and Housing Tribunal for Ilala District (the DLHT), claiming against the respondent for trespass in his land approximately 19.5 *Acres.*

footsteps. The land in dispute is situated at Amani Street Tabata Chang'ombe, Ilala District, Dar es Salaam.

The applicant lost before the DLHT as his application was dismissed for lack of merits. Dissatisfied with the judgment and decree of the DLHT, the applicant preferred an appeal before this Court with five grounds of appeal faulting the findings of the DLHT. After hearing the parties, this Court dismissed the appeal with costs. That was on 25th October 2021.

Back to the present application, the applicant in his affidavit as well as written submissions in support of the application contends that, the reasons for his failure to lodge notice of intention to appeal as well as leave to appeal to the Court of Appeal are that he had no sufficient funds to pursue the intended appeal. The applicant contends further that he had to seek legal assistance from Tanganyika Law Society which caused further delay.

The applicant has referred the decision of **British Broadcasting Corporation vs. Eric Sikujua Ng'imaryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania at Dar es Salaam which governs determination for application for leave to appeal. *Acle-*

The applicant contends that there are points of law and facts for determination by the Court of Appeal which he intends to raise once the present application is granted.

Having gone through application and submission of the applicant the issue which calls for the Court's determination is whether the application has merit.

It is trite law that in an application for extension of time to do a certain act, like in present one, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.

Some of the decisions of the Court of Appeal of Tanzania which require good cause to be shown before the Court can exercise its powers for extension of time are; **Abdallah Salanga & 63 Others vs. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

However, what constitutes good cause has not been codified although a number of factors to be considered are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant. (See for

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instance the cases of **Tanga Cement Company Limited vs. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand vs. Eva Zakayo Mwita (*As Administratrix of the Estate of the Late Aibanus Mwita*)** and **Wambura NJ. Waryuba vs. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported).

In the present application, the judgment which the applicant seeks to challenge was delivered on 25/10/2021 while the present application was lodged on 16/12/2021. Hence counting from the date on which the impugned judgment was delivered to the date the present application was lodged, about **52** days have lapsed. The reasons for failure to lodge the application in time were due to lack of funds as well as time spent to seek for legal assistance at the Tanganyika Law Society.

Regarding time spent by the applicant looking for legal assistance from Tanganyika Law Society, the affidavit in support of the application is silent on when the applicant begun to look for the said assistance and it has not been stated on which dates the applicant visited the offices of the Tanganyika Law Society and who attended him. There ought to be a proof

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such as a letter from the Tanganyika Law Society or affidavit of the person who attended the applicant to prove that the applicant truly made attempts to seek legal assistance from the Tanganyika Law Society. In absence of such proof, it cannot be ascertained that the applicant ever sought legal assistance from Tanganyika Law Society hence this contention is rejected.

Regarding the contention that the applicant was financially incapacitated, I find this ground to have no bearing with the applicant's failure in lodging the application in time. I state so because in the present application the applicant paid the requisite fee as evidenced by the exchequer receipt No. 24950444. Now if truly the applicant was financially incapacitated he had an option to seek waiver to pay the required filing fee or to seek legal aid. Now as the ground has been raised by the applicant, he ought to have adduced more evidence in his affidavit to state how much amount of money he needed and the time he spent looking for the said money in order for the Court to exercise its discretion of extending the time.

Moreover as I have stated before, the applicant paid the requisite fee when he lodged the present application, now how and when did he get the money to pay for the present application has not been stated. It is for the

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foregoing reason I hold that the contention of lack of money by the applicant does not have any bearing for his failure to lodge the application in time.

It is settled law that in an application for extension of time to do an act, the applicant is supposed to account for each day of delay. See for instance the case of **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta vs. Jane Jonathan** (*As Legal Representative of the Late Simon Mperasoka- Deceased*), Civil Application No. 566/01 of 2018 (both unreported). For instance, in the former case the Court stated thus:

"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"

In the present application, the applicant was bound to strictly account for each day of delay. But he has not been able to discharge this duty as in his affidavit the applicant has not stated what happened on each day of the delay. It is for the foregoing reasons that I hold that the

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application lacks merits and it is hereby dismissed with no order as to costs.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style with a long horizontal stroke extending to the right. Below the signature is a horizontal dotted line.

A. MSAFIRI,

JUDGE

10/5/2022