

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

MISC. LAND CASE APPLICATION NO. 474 OF 2021

(Arising from the decision of The High Court Land Division in Land Appeal

No. 265 of 2019 dated 24th March 2021)

OMARY SHAMTE NGWEYA **APPLICANT**

VERSUS

RAHMA ALLY MJIE **RESPONDENT**

RULING

Date of Last Order: 07/12/2021 &

Date of Ruling: 27/01/2022

A. MSAFIRI, J.:

The Application is in respect of the decision by Hon. Maghimbi, J in Land Appeal No. 265 of 2019 before this Court where the present applicant OMARY SHAMTE NGWEYA had lost his appeal against the present respondent RAHMA ALLY MJIE.

Aggrieved by that decision, he started to process his second attempt to appeal to the Court of Appeal of Tanzania. Accordingly, he filed Misc. Land Case Application No. 474 of 2021 seeking for extension of time to file application for leave to appeal to the Court of Appeal of Tanzania together with extension of time to file notice of appeal out of time under Section 11 (1) (c) 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.

The reasons for time extension are articulated in the applicant's affidavit that, the delay is technical and not deliberately or negligence.

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The same has been contested by respondent in her counter affidavit. On the date of hearing of the application, the matter was argued orally and both parties appeared unrepresented.

In his submission the applicant simply prays for the Application to be granted according to the reasons stated in his affidavit. On the other hand, the respondent replied by praying for the dismissal of the application for the reasons stated in her counter affidavit.

It is trite law that in determining an application for extension of time, the court focuses on whether the applicant has adduced sufficient reasons to warrant grant of the application sought. And what constitutes a good cause was defined by Hon. Mjasiri JA (as she then was) in the case of **OSWALD MASATU MWIZARUBI versus TANZANIA FISH PROCESSORS LTD** Civil Application No. 13 of 2010 CAT, (unreported) when she said;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

Most of the time those good causes are basically found in the affidavit supporting the Application. The reasons for delay have been explained under paragraph 4, 5 and 6 of applicant's affidavit that, the delay was facilitated by legal technicalities. That he once filed the Misc. Land Application No. 186 of 2021 for leave to appeal to the Court of Appeal

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and it was struck out on basis of technical ground that it was brought under the wrong provision of law.

I have gone through the affidavits to this Application together with annexures therein, in my opinion the applicant has provided this Court with good reasons to warrant his request. The reason behind my finding is that, upon the perusal I came across the Misc. Land Application No. 186 of 2021 for leave to appeal to the Court of appeal which was struck out for technical ground on 31st August 2021 by Hon. Mgeyekwa J. Immediately after being struck out, the applicant filed the present Application on 10th September 2021 after only 9 (nine) days have lapsed.

Section 21 (2) of the Law of limitation Act Cap. 89 R.E 2019 requires that the time spent in prosecuting other Application in relation to the matter before the Court be excluded. Applying this, then there is no doubt that the Application is within time. Basing on that and considering that the applicant is a layman and unrepresented, I accordingly proceed to allow this application for the reasons stated on the affidavit taking into account the applicant's right to be heard on his appeal should not be denied.

In the foregoing, the Application is granted and the applicant is ordered to file notice of appeal within 14 days and Application for leave to appeal to the Court of Appeal be filed within 30 days from the delivery of this Ruling. Costs to follow the events in the intended appeal.

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It is so ordered.

Dated at Dar es Salaam this 27th Day of January 2022.



A. MSAFIRI
JUDGE

