

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.301 OF 2022

REJOICE NDALIMA APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF
PENTECOSTAL HOLINESS MISSION RESPONDENT

RULING

Date of last Order: 08.07.2022

Date of Ruling: 15.07.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to file an appeal out of time against the decision of this court in respect to Land Revision No. 02 of 2020. The application, preferred under the provisions of section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]]. The affidavit is supported by an affidavit deponed by Bitaho B. Marco, the

applicant's Advocate. The applicant has set out the grounds on which an extension of time is sought. The respondent has opposed the application by filing a counter-affidavit. The first respondent's counter-affidavit is deponed by Robert Charles Oteto, the respondent; counsel

When the matter was called for hearing on 27th June, 2022, the applicant enlisted the legal service of Mr. Marco, learned counsel, and Mr. Robert Odeyo, learned counsel appeared for the respondent. The learned counsel for the applicant urged this court to argue the application by way of written submission. The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

In his submission, in support of the application, Mr. Marco was brief and straight to the point. He submitted that the applicant has brought the application under section 11 (1) of the Appellate Jurisdiction Act, Cap. 141. The learned counsel for the applicant submitted that the applicant must account for the days of delay. He urged this court to have mercy on the applicant since he had financial problems thus he did not have money to hire an Advocate. He went on to state that the applicant managed to pay an advocate who had family problems thus he was not able to hire an advocate to file an application for leave. He submitted that there is a likelihood of

success in the intended appeal. To fortify his submission he cited the case of **Samson Kishosha Gabba v Charles Kingongo Gabba** (1990) TLR 133 HC.

Mr. Marco urged this court to grant the applicant's application for the interest of justice to enable the applicant to enjoy his constitutional rights. To buttress his submission, he cited the case of **Fortunatus Masha v William Shija** (1997) TLR 154. To buttress his submission he cited Articles 13 (6) (e) and 107 A (2) (e) of the Constitution of the United Republic of Tanzania.

In conclusion, Mr. Marco urged this court to grant the applicant's application with costs.

In reply, the learned counsel for the respondent strenuously opposed the application. He submitted that the instant application lacks merit. He submitted that the reason for an extension of time is not clearly expressed since there is no any document to show that the applicant had legal aid since there is no any affidavit from the purported legal aid center. He added that the family problems are not elaborated on. The learned counsel complained that the ground of great success cannot hold water because the same is not supported by any document as the said impugned decision is not attached.

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

In his rejoinder, the applicant maintained his submission in chief.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant application with costs.

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

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.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, I have shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. In his submission, the applicant's advocate relied on accounting days of delay and mostly he relied on the ground of illegality. The applicant' Advocate in his written submission submitted that the applicant the Land Appeal No. 187 of 2021 was delivered on 31st March, 2022 and the applicant lodged the instant application on 9th June, 2022.

The applicant's counsel in paragraph 3 of his affidavit submitted that he has lodged a Notice of Appeal within time thereafter he had financial constraints. His main reason for his delay is that he did not afford to employ a lawyer, hence he found himself out of time. In his affidavit, Mr. Bitaho Marco did not specify when the applicant faced financial difficulties when he

seek legal aid. I join hands with Mr. Robert's findings that the applicant has not proved his submission by any document. The Notice of Appeal and the impugned appeal were not attached. The record reveals that the learned counsel's affidavit is based on the issue of financial constraints but the learned counsel did not mention the date when exactly the applicant faced those problems. Thus, I fully subscribe to the written submission made by the learned counsel for the respondent that the applicant has failed to account for these days of delay contrary to the principles laid down in the famous case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). The Court of Appeal of Tanzania stressed that the applicant must account for each day of delay. The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Millss v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application

No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

"Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay."

After taking into consideration what has been stated in the affidavit filed by the applicant's counsel, I would like to make an observation that the applicant's counsel in his affidavit has failed to move this court to grant the applicant's application.

In consequence, thereto, I find that the applicant has failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file leave to appeal to the Court of Appeal of Tanzania out of time. The application is therefore dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 15th July, 2022.



A.Z.MGEYEKWA

JUDGE

15.07.2022

Ruling delivered on 15th July, 2022 in the presence through video conferencing whereas bot counsels were remotely present.




A.Z.MGEYEKWA

JUDGE

15.07.2022