

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 288 OF 2022**

(Arising from the Judgment and decree of the High Court, Case No. 130 of 2021 Decision made on 19<sup>th</sup> April, 2022 before A. MSAFIRI (J). In the matter learned Tribunal Kibaha, Appeal No. 48 of 2020 by LUNG'WECHA Chairman)

**MFANYEJE M. MAKONGORO ..... APPLICANT**

**VERSUS**

**AZIZI HAMZA ALLY ..... RESPONDENT**

**RULING**

*Date of Order: 02.08.2022*

*Date of the Ruling: 03.08.2022*

**A.Z. MGEYEKWA, J**

In this application, the Court is called upon to grant leave that will enable the applicant to file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this Court in Misc Appeal No. 130 of 2021. The application has met opposition, fielded by the respondent, through his counter-affidavit. The application is brought under section 11 (1) of the

Appellate Jurisdiction Act, Cap 141 [R.E.2019]. The application is supported by an affidavit deposed by Mfanyeje M. Makongoro, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deposed by Azizi Hamza, the respondent.

When the matter was called for hearing 2<sup>nd</sup> July, 2022 the applicant appeared in person, unrepresented while the respondent enjoyed the legal service of Mr. Augustino Kusalika, learned counsel.

In his submission, the applicant prayed for this court to adopt his affidavit and form part of his submission. He had not much to say. He stated that on 22<sup>nd</sup> April, 2022, he wrote a letter requesting copies of Judgment and Decree. The applicant went on to submit that the said copies were supplied to him on 9<sup>th</sup> May, 2022 and that by the time obtaining the copies he was already out of time, 14 days lapsed. He submitted that he could not file Notice of Appeal without first obtaining the copies of the Judgment and Decree of the impugned decision of this court.

In response, Mr. Kusalika learned Advocate contended that there was no need to file this application because the Judgment was delivered on 19<sup>th</sup> April, 2022 and the applicant collected the Judgement on 09<sup>th</sup> May, 2022, at the time when the applicant received the said copies he was still within time to file Notice of Appeal. It was his view that this application is

prematurely lodged before this court. He went on to submit that it is not a legal requirement to attach copies of the impugned decision in the application to file a Notice of Appeal to the Court of Appeal.

In conclusion, the learned counsel for the respondent urged this court to dismiss the application with costs.

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

I have heard the applicant and the respondent's counsel submission and the issue for determination is whether the application is meritorious.

The record reveals that the applicant received the impugned Judgment was delivered on 19<sup>th</sup> April, 2022, and the copy of the Judgment was supplied to the applicant on 09<sup>th</sup> May, 2022. The time limit to file a Notice of Appeal to the Court of Appeal is stipulated under Rule 83 (1) & (2) of Court of Appeal Rules, Cap. 141 [R.E. 2019]. Rule 83 (1) (2) provides that: -

*"83. -(1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.*

*(2) Every notice shall, subject to the provisions of rules 91 and 93, be so lodged **within thirty days** of the date of the decision against which it is desired to appeal."* [Emphasis added].

Applying the above provision of the law in the matter at hand, it is clear that at the time when the applicant lodged the instant application on 3<sup>rd</sup> June, 2022, the applicant was within time. As rightly pointed out by the learned counsel for the respondent the applicant was not required to file the instant application and to attach a copy of the impugned decision. However, two months have lapsed since the applicant filed the instant application before this court, thus, the applicant is out of time.

For the aforesaid reasons, I find it is prudent for this court to exercise its discretionary power to grant an extension of time to the applicant to file the Notice of Appeal out of time.

In the upshot, I proceed to grant the applicant's application to file the Notice of Appeal to the Court of Appeal within 45 days from today.

Order accordingly.

Dated at Dar es Salaam this date 3<sup>rd</sup> August, 2022.



A.Z.MGEYEKWA

**JUDGE**

03.08.2022

Ruling delivered on 3<sup>rd</sup> August, 2022 via video conferencing whereas the applicant and the learned counsel for the respondent were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

03.08.2022