

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

MISC. LAND CASE APPLICATION NO.779 OF 2022

*{Arising from Misc. Land Case Appeal No.26 of 2022, by the High Court
of Tanzania, Land Division, before Hon. F.R Khalfani J}*

SAID ISSA IBRAHIM.....1ST APPLICANT

JAMES PETER KALINGA.....2ND APPLICANT

VERSUS

HUSSEIN RAMADHANI KIOMBO.....RESPONDENT

RULING

Date of Last Order: 01.03.2023

Date of Ruling: 28.03.2023

T.N. MWENEGOHA, J

The applicants have moved this Court for an order of extension of time so that they can lodge an application for a certificate on point of law out of time. The Chamber Application was brought under **Section 40 and 41 (a) and (b) of the Written Laws (Miscellaneous Amendments Act) No. 2 of 2016 and section 41 (1) of the Law of Limitation Act, Cap 89 R.E 2019** and conveyed by the joint affidavit of the both applicants. The same was heard by way of written and printed submissions and preceded *ex parte* against the respondent.

Both applicants appeared in person. They started to kick the ball rolling. They asseverated that, they failed to file their intended application within time, because they were not supplied with the copies of Judgment and Decree of the decision of this Court [Hon. Khalfan], J] within time. That, the documents in question were supplied to them on the 14/11/2022, more than 30 days after the delivery of the said decision which was on the 7th October, 2022.

Having carefully painstaking the submissions by the applicants, their joint affidavit thereto, it appears to me, first, to determine whether the applicants' have established sufficient cause(s) for this Court to extend time within which they can lodge an application for certificate on point of law out of time.

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. Guidelines have been formulated by the Court of Appeal to that effect as stated in the prominent case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) at page 6 & 7 thus:-

- a) The applicant must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

In the application at hand, the applicants have stated the reason that led to their delay in taking the intended actions is the fact that, this Court failed to supply them with the necessary documents namely copies of Judgment and Decree within time. So, to speak, they received the said documents on the 14/11/2022, upon lapse of 30 days after the delivery of the said decision which was on the 7th October, 2022.

Going by annexure A and B in order to satisfy myself on that fact. What they reveals is completely different to what the applicants are alleging. The documents in question do not show that they were issued on the 14th November, rather they were issued on 7th October, 2022. What was supplied to the applicants on the 14/11/2022 is the copy of proceedings,

not the copies of Judgment and Decree. As far as the Judgment and Decree are concerned, the applicants were given the said documents within time. I came to reach to this conclusion as the dates stated by the applicants that the said documents were supplied to them is not the date reflected in the documents; it is not there. That is to say, they have not advanced any plausible reasons for this Court to grant the application in their favour.

For the reasons stated above, I find and hold that this application is unmaintainable in law and it is hereby dismissed without costs. It is so ordered.




T.N. MWENEGOHA
JUDGE
28/03/2023