

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 458 OF 2022**

BETWEEN

JOHN THOMAS.....APPLICANT

VERSUS

KAM COMMERCIAL SERVICES..... 1ST RESPONDENT

NASORO ATHMAN ZONZO.....2ND RESPONDENT

REGISTERED TRUSTEES OF

ASHURA FOUNDATION.....3RD RESPONDENT

RULING

21st December, 2022 & 23rd February, 2023

L.HEMED.J.

This application is brought under section 11(1) of the Appellate Jurisdiction Act, (Cap 141 RE 2019). **John Thomas**, the applicant, lodged the application against the respondents **KAM Commercial Services, Nasoro Athuman Zonzo** and the **Registered Trustees of Ashura Foundation**, seeking for the following orders.

"1. This Honourable court be pleased to extend time to the applicant to apply for leave to appeal and certification that there are points of law involved fit to be entertained

by the Court of Appeal of Tanzania out of time. (Sic)

2. Costs of this application to be in the cause. (Sic)

3. Any other order (s) that, this Honorable Court may deem fit and necessary to grant.”

The respondents challenged the application by filing counter affidavit. To dispose of the application this court, on 08/12/2022 directed parties to argue the application by way of written submissions. The same were filed as per the ordered schedule.

Having gone through the affidavits and submissions made by the parties, I have realized that the application has raised two grounds for extension of time. The 1st ground is technical delay and the second one is illegality. The applicant has asserted that he filed an application for leave timely. However, after hearing by way of written submissions, at the date of ruling, the court raised an issue ***suo motu*** that the application did not have notice of Appeal attached to the affidavit, wherefore on 22/07/2022, the application was withdrawn with leave to re – file.

According to the applicant he had to look for the notice of Appeal so as to cure the defect. He found the notice and sent it to his advocate on 26/07/2022. On 27th, 28th, and 29th July, 2022 the present

application was prepared. He signed it on 1st August, 2022, on 2nd August, 2022 it was e – filed and on 06th August, 2022 it was registered.

It was the submission of the applicant that the said delay suffices to be a technical delay and that the delay from the date of decision in Land Appeal No. 261 of 2020 on 21/10/2021 to 26/07/2022 was the time spent in proceedings in Court exempted under section 21 (1) of the Law of Limitation Act, (Cap 89 RE 2019). He cited the case of **Amos Mnyama and others Vs. M/s Bio Sustain Tanzania Ltd**, Misc. Land Application No. 32 of 2020 to cement his point.

In reply thereof, it was contended by the respondent that the applicant had filed an application for leave to file an appeal to the Court of Appeal which was struck out for failure to attach the notice of appeal. The respondents were of the view that this was negligence on the part of the applicant hence the applicant must have accounted for each day of delay. It was asserted that there were no reasons as to why the applicant did not attach the Notice of Appeal to the application. In the opinion of the respondent, failure to attach notice of appeal was a gross negligence which should not be tolerated by this court.

Let me now turn to determine whether good cause has been shown to warrant this court grant the application at hand. As evidenced

in the affidavit of the applicant and amplified in the submissions, the applicant in this matter had filed his application for leave to appeal to the Court of Appeal in time. However, it was withdrawn with leave to refile on technical ground that Notice of Appeal was not appended to the application.

I must state right at the outset that this ground is a sufficient to warrant the application to be granted. It is my firm opinion that, the time spent in prosecuting the defective application amounts to a technical delay which the applicant cannot be blamed. Courts have held in various cases that a technical delay is explicable and excusable. Some of the cases are **Salvand K. Rwegasira Vs. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, **Sahara Katindi and Another Vs. Luma Swalehe and 9 others**, Civil Application, No. 4/05 of 2017 and **Yara Tanzania Limited Vs. D. B Shapriya and Co. Ltd**, Civil Application No. 498/2016 of 2016. In **Fortunatus Masha Vs. William Shija and another** (1997) TLR 154, the Court of Appeal stated the following in regard to technical delay.

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delay

in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted”.

The question is whether the Applicant acted immediately after the withdraw of the Application for leave to refile. The affidavit of the applicant and his submissions, show that after the order to withdraw with leave to refile on 22/07/2022, he immediately started looking for notice of appeal. Having found it on 26/07/2022, he submitted it to his advocate who used three (3) days, (27th, 28th and 29th July, 2022) to prepare the application. The applicant was called to sign it on 1st August, 2022 and on 2nd August, 2022 the application was e – filed. From the foregoing, the applicant acted promptly. Again, the days from 22/07/2022 to the date of filling the present application on 02/08/2022 have been well accounted for.

In the final analysis, I find that the ground of technical delay as

pointed herein above has constituted a good cause to warrant this court grant this application. In the circumstances, I cannot labor to determine the other grounds on illegality. Application is thus granted with no orders as to costs. The intended application should be filed within 14 days. It is so ordered.

DATED at **DAR ES SALAAM** this 23th day of February, 2023.




L. HEMED
JUDGE

COURT: Ruling is delivered in the presence of **Ms. Beatrice Njau** for the Applicant and also holding brief of **Mr. Mombeki Kabyemela** for the 3rd Respondent. 2nd Respondent present in person. 1st Respondent present through **Jaffery Hamis** – Principal Officer this 23/02/2023. Right of appeal explained.




L. HEMED
JUDGE
23/02/2023