

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

**MISC. LAND APPLICATION NO. 320 OF 2023**

*(Arising from the Decision of the High Court of Tanzania Land Division Dar es Salaam at Morogoro delivered on 31<sup>st</sup> August 2022 Hon. M.J. CHABA, J. in Land Appeal No. 47 of 2020)*

**JESCA LIVINDA.....APPLICANT**

**VERSUS**

**ESTA MASALIBOKO..... RESPONDENT**

**RULING**

*11<sup>st</sup> July, 2023 & 21<sup>st</sup> July, 2023*

**L. HEMED, J.**

This matter arises from the decision of this court sitting at Morogoro in Land Appeal No. 47 of 2020 delivered on 31<sup>st</sup> August 2022 by my brother at the bench Hon. M.J. CHABA, J. In this application made under section 5 (2) (c), 11 (1) of the Appellate Jurisdiction Act, [Cap, 141 R.E 2019], section 47 (10 and (3) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and Rule 46 (1) of the Court of Appeal Rules of 2009, the Applicant seeks for the following orders:

*"a) The applicant be granted extension of time to file application for certificate of point of law to*

*appeal to the Court of Appeal of Tanzania against the Decision of the High Court of Tanzania (Land Division) – Dar es Salaam at Morogoro delivered on 31<sup>st</sup> August 2020 Hon. M.J. CHABA, J. in land appeal no. 47 of 2020.*

*b) Cost of this application be provided for*

*c) Any other relief(s) that this court may deem fit and just to grant.”*

The application was supported by the affidavit deponed by one JESCA LIVINDA, who is the Applicant in the instantaneous matter. The Respondent was duly served on 19<sup>th</sup> June, 2023, but up to 11<sup>th</sup> July, 2023, she did not file counter Affidavit nor entered appearance when the matter was called. In that regard, the court ordered the matter to be determined *exparte*. It was heard *viva voce* on 11<sup>th</sup> July, 2023.

On the hearing date, one Mr. Kelvin Mundo, an Attorney under the Power of Attorney, represented the applicant. He submitted that the Applicant was aggrieved by the decision of this court in the aforesaid Appeal but she could not file the application for certificate on point of law in time because she was not supplied with copies of judgment and Decree in time. He also asserted that the applicant was sick that she could not file

the application in time. In substantiating his argument, he cited the decision of the Court of Appeal of Tanzania in **National Housing Corporation and 3 others vs Jing Lang Li**, Civil Application No. 432/17 of 2017 on the point that sickness is a ground for extension of time.

Having heard the submission from the applicant the issue for determination is whether sufficient cause has been demonstrated to warrant the court exercise its discretion power to extend time to the applicant as prayed.

From the submissions and the affidavit of the applicant, three reasons have been stated as the cause of the delay to file application for certification on point of law. The 1<sup>st</sup> reason pleaded by the applicant is that the court delayed in supplying her a copy of Judgment for her to take legal action. The second reason stated by the applicant is sickness from 20<sup>th</sup> July 2015 to 21<sup>st</sup> December, 2022. The last ground relied upon by the applicant is irregularities or illegalities in the impugned decision in Land Appeal No. 47 of 2020.

Let me start with the 1<sup>st</sup> point on the delay to be supplied with copies of the Judgment. The impugned Judgment was delivered on 31<sup>st</sup> August,

2022. The Applicant wrote a letter to the Registrar requesting for copies of Judgment, decree and proceedings on 7<sup>th</sup> September, 2022. Reminders were made on 13<sup>th</sup> September, 2022, 15<sup>th</sup> September, 2022 and on 29<sup>th</sup> September, 2022. On 17<sup>th</sup> May, 2023, the applicant filed the application for extension of time which was registered as Application No. 24 of 2023. However, on 10<sup>th</sup> May, 2023, the Applicant withdrew it and refiled the instant application on 22<sup>nd</sup> May 2023. In her submission and the affidavit supporting the application, it has been contended that the delay in lodging the application for the certificate on point of law was caused by late supply of the copy of Judgment and Decree thereof in time.

I have extensively perused the affidavit of the Applicant and found that she has not stated what she was doing between 21<sup>st</sup> December, 2022 and 17<sup>th</sup> May, 2023, almost five (5) months. It is settled law that days of the delay must be accounted for. This was emphasized by the Court of Appeal of Tanzania in **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 thus:-

*“Delay, of even a single day, has to be accounted for otherwise there would be no point of having*

*rules prescribing periods within which certain steps have to be taken."*

The need to account for each day of the delay and other guidance for extension of time were also laid down by the Court of Appeal of Tanzania in **Lyamuya construction company Ltd vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, 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) ....."*

From the above ratio decidendi, it is obvious that the applicant has failed to account for the days from 21<sup>st</sup> day of December 2022 up to 17<sup>th</sup> day of May, 2023. On top of that, failure to lodge the application for almost five (5) months portrays the inordinance and sloppiness on the part of the applicant. This is intolerable!

The applicant also pleaded on sickness. I am aware that sickness is among the grounds for extension of time. This was stated in **Alasai**

**Josiah (suing by his Attorney Oscar Sawuka) vs Lotus Valley Ltd,**

Civil Application No. 498/12 of 2019 that:

*“sickness is beyond human control and therefore no body will fault the applicant for being sick.”*

However, for sickness to be considered as ground for extension of time, such sickness must have prevented the applicant from acting upon his/her action/application. In the affidavit deposed by the applicant, it has been stated in paragraph 13, that she was sick from 20<sup>th</sup> July, 2015 to 21<sup>st</sup> December, 2022. This means that from 22<sup>nd</sup> December, 2022 she was no more sick that she could proceed pursuing her application. Record shows that, the applicant relaxed up to 17<sup>th</sup> May, 2023. In the circumstance of this case, the alleged sickness cannot be a ground for extension of time.

The applicant in paragraph 20 of the affidavit, has tried to plead illegalities. She stated that the decision in Land Appeal No. 47 of 2020 was erroneous due to the fact that the decision is tainted with fatal irregularities/illegalities which should not left to stand. It has to be noted that in every intended appeal, a party would be seeking to challenge a decision either on points of law or facts, therefore, it cannot be that every applicant who demonstrates that his intended appeal raises points of law or


illegalities should be granted extension of time if he/she applies for one. In other words, raising a point of illegality in an application for extension of time does not guarantee the application to be granted. The applicant must demonstrate that such illegality is apparent on the face of the record. This was also pointed out in **Rovitha Kemilembe vs M/C Tanzania Limited**, Civil Application No. 192/17 of 2021 the Court of Appeal had this to say:

*"illegality must be sufficient importance.....it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process."*

I have tried to examine the impugned Judgment and could not find the alleged illegality on the face of it. In that regard the point of illegality pleaded by the applicant cannot be a sufficient ground for extension of time.

In the end, I find no merits on the application. I thus proceed to dismiss it entirely with costs. It is so ordered.

**DATED at DAR ES SALAAM this 21<sup>st</sup> July, 2023.**

 *L. Hemed*  
**L. HEMED  
JUDGE**