

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

**MISC. LAND APPLICATION NO. 272 OF 2023**

(Land Case No. 88/2010, Land Division)

**MUSTAFA HAJI.....APPLICANT**

***VERSUS***

**ALLY HAJI.....RESPONDENT**

**RULING**

11-16 August, 2023

**E.B. LUVANDA, J**

The Applicant above named filed this application moving this court for an order that: One, this court pe pleased to enlarge time for the Applicant to file an application for leave to appeal to the Court of Appeal of Tanzania against the decision of Madam Judge Ngwala delivered on 2/09/2013; Two, this court pe pleased to enlarge time for the Applicant to file notice of appeal out of statutory time against the decision of Madam Judge Ngwala delivered on 2/09/2013.

The reasons for delay are contained in the affidavit in support of the application, being delay to be supplied copies of judgement, decree and proceedings from 12/9/2013 when were sought up to 9/05/2014 when were supplied; technical delay in prosecuting other applications, including Misc.

Application No. 874/2017 which was struckout on 13/07/2018 for being defective (omission of the word "leave to appeal"); Misc. Land Application No. 602/2018 for extension of time to file review, which was rejected for failure to account each day of delay; Civil Appeal No. 173/2020 to the Court of Appeal against the decision refusing extension, which was struckout for want of leave to appeal, and alleged automatically rendered a notice of appeal filed earlier a nullity, hence extension of time to file a notice of appeal as well, being second limb to this application; inadvertently acts by the legal aid provider who were representing the Applicant; strong arguable grounds of appeal; illegality in respect of transfer of the impugned property; recovery of crucial documents.

In the counter affidavit deponed by Halima Abdul Wahid administratrix of the late Alli Haji Mohamed, stated that Misc. Application No. 874/2017 was dismissed for failure to account for the delay in filing the same. That there is no notice of appeal which was filed within statutory time. That the Applicant was in possession of all necessary documents intended to be relied upon. That the Applicant had ample time to challenge the decision of the court.

Mr. Barnaba Luguwa learned Advocate submitted that after being engaged by the Applicant who is ignorant and uneducated citizen, upon reading pleadings and evidence on records, discovered that the Applicant has a right over a suit land, where his office made efforts to look for some documents which were recovered and contemplated to file a review for the same to get the attention of the court, but the time to file the same had expired. He submitted that the Applicant filed an application for extension of time which was refused by Honorable Maige, J as he then was, on the ground that the Applicant failed to account for the time of delay. He submitted that the Applicant preferred Civil Appeal No. 173/2020 to the Court of Appeal which was turned down on 22/03/2023 for want of leave to appeal. He submitted that the Applicant filed this application within March on less than a week from delivery of the decision of the Court of Appeal. He argued that this is a good example of a person who does not sleep on his right and take a step timely. He submitted that the intended appeal is against the decision of Honorable Maige, J and the Applicant has accounted for what he has been doing during the period from the decision was delivered, his way to the Court of Appeal until now on this application. He cited the case of **Mary Mchome Mbwambo & Another vs Mbeya Cement Limited**, Civil Application No.

271/01 of 2016. He argued the court to allow the application other than denial which will mean shutting the door for the Applicant to access justice. He submitted on illegality that the trial judge failed to weigh between the procedural issue of delay and illegality and that he failed to consider the fact that documents in issue were recovered not long from the time of filing the application.

In reply, Mr. Domitian G. Rwegoshora learned Counsel for Respondent, submitted that the Applicant never filed a notice of appeal against the decision of Land Case No. 88/2010, the only notice he filed was against the decision in Misc. Land Application No. 602/2019 (sic, 2018). He submitted that in the previous applications including Misc. Land Application No. 874/2017, the Applicant did not envisage to have filed a notice of appeal. The learned Counsel submitted that the Applicant did not attach to his affidavit the alleged notice of appeal. He submitted that a period available for the Applicant to file notice of appeal is thirty days and leave to appeal is fourteen days, citing rules 68(1) and 45(a) of the Court of Appeal Rules. He submitted that the Applicant is seeking extension after elapse of ten years. The learned Counsel cited section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019, for a proposition that extension of time is available where the

Applicant advance reasonable and sufficient cause. He cited the case of **Metro Petroleum Tanzania Limited & 3 Others vs United Bank of Africa**, Civil Appeal No. 147/2019 CAT at DSM, for a proposition that in exercising its discretion in extending time, the court must do it judiciously, reasonably based on sound legal principles. He submitted that the Applicant ought to avail sufficient material for action taken, account for the delay and establish the illegality. He submitted that going through the affidavit and skeleton of his argument, the Applicant failed to account for the delay of three years from 9/5/2014 up to October 2017 when he filed Misc. Land Application No. 874/2017; three months from 13/7/2018 when Misc. Application No. 874/2017 was dismissed up to 5/9/2018 when Misc. Application No. 602/2019 (sic, 2018) was filed; from 21/6/2019 when Misc. Application No. 874/2017 was dismissed up to 5<sup>th</sup> June when Civil Appeal No. 173/2020 was filed at the Court of Appeal. He cited the case of **Godwin Ndewesi and Another vs Tanzania Auditing Corporation** [1995] TLR 2000; **Lyamuya Construction Company Ltd vs Board of Registered Trustee fo Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010. He submitted that the Applicant delayed in taking the necessary step out of his own negligence, because in Land Application

No. 874/2017 and 602/2018 he was represented by the same Counsel. He cited the case of **William Shija vs Fortunatus Masha** [1997] TLR 213; **Daphine Parry vs Murry Alexander Carson** [1963] EA 546. He submitted that the alleged illegality which is grounded on the reason that the Applicant was not in possession of necessary documents to support his case, is not an issue which is apparent on the face of the record. He cited **Tito Patric Sanga vs Esmail Yaru Mohamed & 4 Others**, Civil Application No. 170/17 of 2020, CAT.

On rejoinder, the learned Counsel for Applicant submitted that he noted that Literally this application is unmerited, this is because the records depict that after the Applicant was availed with documentation necessary for taking steps to challenge the impugned decision, supplied to him on 9/05/2014 as per exchequer receipt annexure B to the affidavit, the Applicant stayed idle for almost four years till on 18/10/2017 when he filed a defective application for extension of time, to wit Misc Land Application No. 874/2017. It is to be noted that a date for filing Misc. Land Application No. 874/2017 to wit 18/10/2017, was not disclosed in the affidavit in support of this application. It would appear the Applicant avoided to mention the exact date he filed it, for best reasons known to himself, invariably to escape an obligation for

accounting each day of delay. After this application was struck out on 13/07/2018, the Applicant wasted another fifty-four days up to 6/09/2018 when he filed Misc. Land Application No. 602/2018 for extension of time to file review against the impugned judgment. This application was dismissed on 21/06/2019 for inordinate and unjustified delay. Thereafter the Applicant wasted the whole remained second half of 2019, till on unspecified date in his affidavit when allegedly filed Civil Appeal No. 173/2020 to the Court of Appeal, but a date was disclosed in the submission of the Respondent to have been filed on 5/06/2020. This appeal was struck out on 22/03/2023 following concession of its incompetence.

In view of that, I reinstate a verdict of this court in Misc. Land Application No. 602/2018 that the Applicant failed to account on each day of delay, given a fact that the interval of taking steps or seeking recourse after each attempt/failure, was demarcated by a huge extended gap portraying inaction and laxity on his part. In fact, the Applicant cannot be accommodated under technical delay due mischief in between.

Regarding the inadvertently acts by the alleged legal aid provider who were representing the Applicant, of course records suggest that up to the time of requesting for copy of judgment, decree and proceedings, the Applicant was

under pro bono assisted by Legal and Human Rights Centre. However, in Misc. Land Application No. 874/2017 and subsequent matters, the Applicant hired legal representation, but still delays persisted as usual, as indicated above.

The Applicant also pleaded having strong arguable grounds of appeal. To my view, having arguable case or grounds alone cannot warrant extension of time in the circumstances where I have held the delay to be inordinate. The same applies to alleged recovery of crucial documents, to my view has never been a consideration for extending time. Above all, in the affidavit at paragraph four, the Applicant allege those documents were procured via the assistance of his Counsel Mr. Luguwa Advocate. However, some documents reveal were communicated to the Applicant personally in 2010 and 2015. Importantly this ground was refused in Misc. Land Application No. 602/2018.

On the alleged illegality in respect of transfer of the impugned property, it is the rule that for a party who plead illegality, for it to be successful, it must be plausible on the face of record. To my view, transfer of the disputed property for allegedly the offer in respect of the Applicant is not nullified, frankly speaking is not an illegality which can be said to be apparent on the



face of record. Rather has something to do with grounds of appeal or other recourse as the case may be.

The Applicant alleged his notice of appeal which was filed within statutory time was nullified by the outcome of Civil Appeal No. 173/2020. But in his affidavit, he did not attach any notice of appeal, neither stated as to when was it filed. Therefore, a rebuttal by the Respondent that there is no notice of appeal which was filed within statutory time, outsmart the Applicant in view of the fact that the later was merely alleging.

It is to be noted that, on the above findings I focused to determine issues and reliefs sought by the Applicant in the chamber summons and what he pleaded in the affidavit in support. This is because, in the submission filed by the learned Counsel for Applicant summarized above, he twisted and changed the scope of the application on reliefs and grounds relied upon, by arguing that this application was in respect of the decision of Honorable Maige, J as he then was, delivered on 21/06/2019 and pegged his delay by limiting to technical delay in view of Civil Appeal No. 173/2020 which was against the decision of Maige, J. On that way, the learned Counsel argued that this application was filed within a period of less a week from the decision of the apex Court, contextually it is a misleading argument. This on itself

vindicate that the Applicant failed miserably to account for the delayment on each and every step taken as demonstrated above.

The application is dismissed. Considering a fact that parties are sibling, I will make no order for costs.



E.B. LUVANDA  
**JUDGE**  
16/08/2023

Ruling delivered in the presence of Mr. Barnabas Luguwa learned Advocate for the Applicant and Mr. Rwegoshora learned Advocate for the Respondent.



E.B. LUVANDA  
**JUDGE**  
16/08/2023