

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 472 of 2023**

*(Arising from the Judgment and Decree of this Court in Land Case No.100 of 2012 delivered on 3<sup>rd</sup> November, 2017- Hon. Mzuna, J.)*

**SAID ABDALLAH MSANGI.....1<sup>ST</sup> APPLICANT**

**SENASAR CONSTRUCTION ENGINEERS LIMITED...2<sup>ND</sup> APPLICANT**

***VERSUS***

**TEGETA SERVICE STATION LTD.....1<sup>ST</sup> RESPONDENT**

**GAP OIL TANZANIA LIMITED.....2<sup>ND</sup> RESPONDENT**

**NEW MSIMBAZI Kerosine Ltd Big Bon.....3<sup>RD</sup> RESPONDENT**

**AHMED S. AHMED.....4<sup>TH</sup> RESPONDENT**

**NAS SECURITY LIMITED.....5<sup>TH</sup> RESPONDENT**

**RULING**

*17<sup>th</sup> August, 2023 & 3<sup>rd</sup> October, 2023*

**L. HEMED, J.**

This application has been made under section 11(1) of the Appellate Jurisdiction Act, [Cap.141 R.E 2019]. The Applicants are seeking for extension of time within which to file Notice of Appeal against the Judgment and Decree of this Court in Land Case No.100 of 2012. The application has been taken at the instance of JBK Advocates and

NGUDUNGI & Co. Advocates and is supported by the Affidavit of one **SAID ABDALLAH MSANGI**.

The respondents challenged the application through the counter affidavits of **AHMED S. AHMED** and **REHEMA ZACHAYO MARANGU**. The application was argued by way of written submissions which were promptly filed as per the directed schedule.

In disposing of the application, **Mr. Daniel Haule Ngudungi**, advocate argued the application on behalf of the applicants while **Mr. Gabriel Simon Mnyele** and **Mr. R.R. Nkoka**-Advocates, acted for the respondents. I have gone through the rival submissions and affidavits in respect of this application. I have opted not to reproduce the submissions in this ruling rather, I will be citing them where appropriate.

This application has been made under section 11(1) of the Appellate Jurisdiction Act, [Cap.141 RE 2019]. It provides thus:-

*"Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may **extend the time for giving notice of intention to appeal from a judgment of the***

**High Court or of the subordinate court concerned**, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.”

In order for the application to be granted the applicants are obliged to demonstrate good cause for the delay. The major issue for determination of this matter is whether good cause has been demonstrated. In the applicants’ affidavit and submissions, it has been asserted that, they were aggrieved by the decision of this court, Hon. Mzuna, J dated 3<sup>rd</sup> November, 2017 and timely filed the Notice of Appeal on 9<sup>th</sup> November, 2017. However, the applicants’ appeal got struck out on 18<sup>th</sup> day of July, 2023 after having been preferred out of time. The applicants have argued that the court should consider the time spent in prosecuting Civil Appeal No.250 of 2020 as technical delay.

In their reply submissions, the respondents were of the view that the applicants were negligent in handling the matter. In their opinion, the applicants could not demonstrate good cause for extension of time. The counsel for the respondents argued that technical delay in itself is not a

good cause at any stage of proceedings. It was their view that negligence defeats the doctrine of technical delay.

Having gone through the rival affidavits and submissions of the parties, I could not find any sense of negligence on the part of the applicants in pursuing the appeal which was struck out by the Court of Appeal. From records, it is clear that the applicants filed the previous notice of appeal in time. The only problem was on the dates in the certificate of delay which resulted for the court to find that the appeal was out of time.

In **Lyamuya Construction Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, amongst the guideline for extension of time is the diligence of the applicant. It was said thus:-

*"...(c) The applicant must **show diligence**, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."*(Emphasis added)

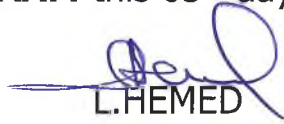
What I have observed from the case at hand is the existence of technical delay. The applicants wasted time in prosecuting the appeal,

which was technically out of time due to anomalies in the certificate of delay. The question is whether technical delay is among the recognized grounds for extension of time. In the case of **Director General of LAPF vs Pascal Ngalo**, Civil Application No.76/08 of 2018, the Court of Appeal of Tanzania observed that:

*" A distinction had to be drawn between cases involving really or actual delays and those such as the present one which clear only involved technical delays 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 instantaneous case, I have noted that the applicants had acted immediately after the pronouncement of the decision of the Court striking out the first appeal. In the circumstance of this case, I find no reason of refusing the application. I do hereby grant the application with no orders as to costs. The applicants to file the Notice of Appeal within 14 days' time. It is so ordered.

**DATED** at **DAR ES SALAAM** this 03<sup>rd</sup> day of October 2023

  
L. HEMED

**JUDGE**

