

IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. APPLICATION NO. 478 OF 2023

(Arising Judgment and Decree of the Land Case No. 9 of 2010 before the High Court of Tanzania (Land Division) at Dar es Salaam Hon. Kibella, J delivered on 27th June 2014.

1. ABDALLAH MBELWA
2. ADBDALLAH MTEGAME
3. ABDALLAH MOHMAED LILEMBE
4. ABILLAHI MOHAMED HASSANI
5. ADAM ALLY
6. ADINATA AKEYO ONDITI
7. AGNESS SAMSON SONGOLA
8. AHMAD RAJABU
9. ALLY ABDALLAH IVICHIYA
10. ALLY DIKOROMA WAZIRI
11. 11ALLY ISMAIL MAKABALA
12. ALLY MKOMAWANDU
13. ALLY NASSORO MAKAME
14. ALLY SALIM ANDALLAH
15. ALOYCE EMMANUEL KILEMBE
16. AMINA HASSAN
17. AMINA SOUD
18. AMMY RAMADHAN
19. AMON BENSON SINYANGWE
20. AMOS KALUGENDO
21. ANAEL NDECHILO ELISA
22. ANGELINA L.KANGILA
23. ANTHONY GERALD
24. ASHA ISSA
25. ASHA MOYO
26. ASINA SULULU ABEID
27. ATE HAMIS ALLY
28. ATHUMAN ALLY SINAHOFU
29. ATHUMAN AMIRI SHEIKH
30. ATHUMAN ATHUMAN GOBARI
31. ATHUMAN KONDO KISEBENGO
32. ATHUMAN MWNINYIMVUA
33. ATHUMAN UREMBO
34. AYUB IVILELI]
35. AZIZA HUSSEIN-ADMINISTRATIX OF HUSSEIN KUNGA
36. AZIZA MANEO KINGO
37. BAKARI KIDUNDA-ADMINISTRATOR OF AMINA ALLY

APPLICANT'S

38. BAKARI HABIBU MWINYIGOFO
39. BAKARI MSHAMU
40. BAKARI S. MGUMILO
41. BAKARI SAIDI MKENDA
42. BEATRICE D. NALINGA
43. BENSON AMON SINYANGWE
44. BUNDALA B. KABULWA
45. CATHERINE EDYBRANDY IVIKULA
46. DANIEL THOMAS
47. DOTTO RAJABU
48. EDWARD SINYANGWE
49. EDWIN NOAH-ADMINISTRATOR OF
NOAH MWANGILE
50. ELIAS JUSTIN SILUNGWE
51. ELIAS MAYEMBA
52. ELISANTE KAWICHE
53. ELIZABETH MCHANI
54. EMMANUEL CLEMENCE
55. ERICK MICHAEL PEMBWA
56. EUNICE EUSTACE MAJULA
57. EVA ALOYCE MTANGA
58. FATUMA ALLY CHITAPA
59. FATUMA ALLY KAPOLO
60. FATUMA RAJABU IVIKALI
61. FATUMA SALUM MAHAWA
62. FELIX KILUMILE
63. FIKIRI RAMADHANI-ADMINISTRATOR OF
RAMADHANI ISMAIL
64. FREDERICK SICHAMBA MDASA
65. FRIDA LUFUNGA
66. GASPER SHOMI MASWAGA
67. GRACE EMILY BAKUZA
68. HABIBA M. MNYAMANI
69. HABIBA OMARY SELEMANI
70. HADIJA RASHIDI
71. HAJI SELEMANI SEIF
72. HALIMA ABDALLAH-ADMINISTRATIX IDD MTITU
73. HALLMA HASSAN RASHID
74. HALIMA MOHAMED-ADMINISTRATIX OF
MOHAMED ATHUMAN KINYOGORI
75. HAMAD ADAM KONDO
76. HAMAD AWADHI
77. HAMISI SAIDI ALLY
78. HAMISI SALEHE NDWANGA
79. HAMISI UREMBO MUNGULE
80. HAMZA TWAHA
81. HARUNA HASSA MWEBEYA
82. HASINA SURU ABEID

APPLICANT'S

83. HASSAN ATHUMAN-ADMINISTRATOR
SHABAN HASSAN
84. HASSAN HABIBU SHINDO
85. HASSAN OMARY KISAMVU
86. HASSAN RAMADHANI DHAHABU
87. HASAN SELEMAN-ADMINISTRATOR OF
SELEMANI BAKARI
88. HAWA IVIWAMBA
89. HEMED BAHORO
90. HIDAYA MWALIMU-ADMINISTRATIX OF
ESHEJEE IBRAHIM
91. HIDAYA ZUBERI
92. HUSSEIN KONDO MCHINGA
93. HUSEIN ZAKARIA MWAFILE
94. HUSSUNA DAMIANI GOWELA
95. INNOCENT GODFREY
96. ISMAIL ABDALLAH-ADMINISTRATOR OF
ADBALLAH NASSOR
97. JANGALI STANSLAUS MANYONYI
98. JOHA SALUM
99. JOHA SEIF
100. JOHN KIHAYO KINGAZI
101. JUMA BAKARI MUSSA
102. JUMA BAKARI MUSSA
103. JUMA HAMIS RAMADHANI
104. JUMA KANYANGA KIDUNGU
105. JUMA MOHAMED ALLY
106. JUMA MUSA
107. JUMA SIMBA
108. JUMA YUSUPH TITO
109. JUMANNE SHABANI GOME
110. JUWALAKO SAID
111. KASPAR DSIMAS SAIDI
112. KASSIM RAJABU
113. KASSIM SELEMANI MZAZI
114. KHALFANI ABDALLAH
115. KIBIBI SULTANI MKALACHAKA
116. KOMBO KHAMISI KOMBO
117. KULWA RAJABU-ADMINISTRATOR OF
MWANAHAWA SELEMANI
118. LACKSON G. NDIMBWA
119. LUCAS LUGUMBA
120. LUDOVICK BENARD SINDANI
121. MAALIM RASHID KOTI
122. MABULA EDWARD
123. MAGNUS SIMON RUHELEKI
124. MAGRETH KIPALULE
125. MAHSEN SALIM

APPLICANT'S

126.MAISALA JUMA-ADMINISTARTOR OF
ZABU KISONTA
127.MARIA ANTHONY KAZIMOTO-ADMINISTRATIX OF
SEVERIA JOHAKIM
128.MARIA MHOJA STEPHANO
129.MARIAM BAKARI MLELI
130.MARIAM MOHAMED LUKANDAMILA
131.MARIAMU ISSA MKWENJELE
132.MARIAMU S.MBWANA
133.MARTIN KUNDI MACHA
134.MARY ALOYCE KILEMBE
135.MBEGU MOTO
136.MGENI ALLY ZEGEKA
137.MKEGANI MKALABURE
138.MOHAMED ABDALLAH MPILI
139.MOHAMED ATHUMAN-ADMINISTARTOR OF
ATHUMAN MOHAMED
140.MOHAMED KHAMIS
141.MOHAMED MAKAMBA
142.MOHAMED MASUD JUMA
143.MOHAMED S. SIMBA
144.MOHAMED SALEHE HUNDA
145.MOSHI SAID BAKARI-ADMINISTRATOR OF
OMAR SELEMAN
146.MSAFIRI ASUMILE MWAKILEMBE
147.MTATIRO MAHANGA
148.MUSSA ABDU
149.MUSSA MOHAMED NZALAMINGU
150.MWAJABU J. CHUGO-ADMINISTARTIX OF
JUMA SALEHE
151.MWAJUMA YUSUPH JOKA
152.MWAJUMA AMIRI-ADMINISTARIX OF
ZUHURA SULTANI SHOMVI
153.MWANAHARUSI SAID
154.MWANAHARI SUDI BONDE
155.NATHANIEL E.MAHELELA
156.NICHOLAUS MAKERE
157.NURU CHAMBUSO
158.OMAR NASEER MWENEGOHA
159.OMAR ABDALLAH LAMBA
160.OMAR FEREJI NZOWA
161.OMARI MAULID BUMBULI-ADMINISTRATOR OF
SALIM SHABAN KUSI
162.PETER JOHN KOMBA
163.PRIVA EPHRAIM MSOKAMI
164.RAJABU ABDALLAH SHAHAA
165.RAJABU MUSSA
166.RAJABU SEMBETA

APPLICANT'S

167.RAMADAHNI JUMA GONGO
168.RAMADHANI NASSORO MCHUNJUGO
169.RAMADHANI MOHAMED KABANDIKA
170.RAPHAEL PETRO
171.RAPHAEL FRANCIS KOFIA
172.RASHID A.CHEGE
173.RASHID ABDALLAH SAIDIA
174.RASHID ALLY MSHAURI
175.REHEMA IBRAHIM
176.RUKIA SEIF MOYOHINDUKA
177.SABRINA ALLY SALIM
178.SADA ALLY YUSUPH
179.SADA MOHAMED ATHUMAN
180.SADI ABDALLAH
181.SAID ALLY MSHAURI
182.SAID RASHID MPABUKA
183.SAID SALEHE HUNDA
184.SAID SEIF KAPER
185.SAID SELEMAN MVUGARO
186.SAID RAMADHANI KIOMOLE-ADMINISTRATOR OF
RAMADHAN OMAR KIOMOLE
187.SAID WAZIRI HAMAD
188.SALEHE IDDI UREMBO
189.SALEHE JUMMANNE-ADMINISTRATOR OF
AMINA JUMMANNE
190.SALEHE KUNGA
191.SALUM ABDALLAH
192. SALUM KIBWANA SELEMAN
193.SALUM MZENGA JUMA
194.SALUM ZUBERI KANDU
195.SANDAS N. MACHA
196.SARAI MBANJO YUSUPH
197.SALEHE MOHAMED MBULU
198.SEIF SELEMAN SEIF
199.SELEMAN ATHUMAN GOBARI
200.SELEMAN MAFAUME MIKINGO
201.SELEMAN NYANGANYANGA
202.SELEMAN WAZIRI
203.SELEMAN YUSUPH
204.SELEMAN SALUM
205.SELEMAN SEIF SELEMAN
206.SHABAN SAID MWANAMBEGA
207.SHIDA SULTANI KONDO
208.SHOMARI SHOMARI LUKALI
209.SIASA MOHAMED HUNDA
210.SIASA SAID
211.SIJALI ABDALLAH LAMBA
212.SIKUDHANI SALUM MGOMBA

APPLICANT'S

213.SOFIA ISSA SALUM-ADMINISTRATX OF ISSA
SALUM SALEHE
214.MWISHEHE JUMA
215.SOPHIA KHALFANI
216.SOPHIA SELEMANI
217.SPATA GODWIN MARIA
218.SULTANI RAJABU
219.SUNUKU A.MASENZA
220.TATU FUMU SHUKURU
221.TATU RAMADAHNI JUMA
222.TATU RASHID USSI-ADMINISTATRIX OF
SHARIFA RASHIDI USSI
223.TATU SALUM
224.VENANNCE JAMES TEMBA
225.VITALIS JOHN LYIMO
226.WILLIAM NGAPANDA
227.WILSON OLWAR ODERO
228.WNINFRIDA L.MBUYA-ADMIISTRATIX OF
JOHN BONAT MUSHA
229.YAHYA JUMA MOHAMED
230.YA SAIDI HUNDA
231.YOHANA THOMAS
232.YUSPH NDONYA
233.ZAINA MOHAMED MWENEGOHA
234.ILYASA MTUMWA MAQSOD
235.ZAKHIA RASHID MKUDULA
236.ZAMOYONI MBWANA MPATE-ADMINISTRATOR OF
MOHMAED NG'OMBO
237.ZENA BAKARI KITABE
238.ZENA ODA
239.ZEITUN OMAR MBONDE
240.ZUBEDA SAID-ADMINISTATIZ OF ABDUL HASSAN

APPLICANT'S

VERSUS

1. THE PERMANENT SECRETARY MINISTRY OF
INFRASTRUCTURE DEVELOPMENT
2. THE ATTORNEY GENERAL

RESPONDENT'S

RULING

Date of last Order: 05/12/2022
Date of Ruling: 09/11/2023

K. D. MHINA, J.

This application has been preferred under Section 11(2) of the Appellate Jurisdiction Act CAP 141 (R.E2019) and Section 21 of the Law of Limitation Act (CAP 89 R.E 2019)

In the application, the chamber summons is supported by the affidavit of Mr. Melchzedeck Joachim, learned counsel for the applicants', which expounds the grounds for the application

The applicants *inter alia* are seeking for the following orders:

- i. *That this honourable court be pleased to grant extension of time for the Applicants to file a Notice of Appeal against the whole decision of the Land Case No. 9 of 2010 at the High Court of Tanzania (Land Division) at Dar cs Salaam. Delivered on 27 June 2014 by Hon. Kibella J.*

The application was heard by way of written submission, and the applicants were represented by Mr. Melchzedeck Joachim, learned counsel, while the respondents were represented by Ms. Luciana V. Kikala, learned State Attorney.

To support his application Mr. Joachim submitted that the Applicants have been in court diligently attempting to challenge Land Case No. 9 of 2010. Previously they managed to file their first appeal before the Court of Appeal in Civil Appeal No. 104 of 2014 on time and was struck out for lack of certificate of delay.

Thereafter, on the 15 September 2017 the applicants lodged an application for extension of time to file leave and appeal out of time vide Misc. Application No. 865 of 2017. However, that application on 31 May 2018 was struck out on legal technicalities. Relentless, the applicants again knocked the doors of the courts vide Misc. Land Application No. 387 of 2018 at this court requesting for extension of time to file leave and notice of appeal out of time. The application was granted.

After that grant the applicants proceeded to file the appeal at the Court of Appeal which was Civil Appeal No. 228 of 2020. At the hearing of the appeal, it was discovered that the appeal was defective. For that reason, on 24 April 2023, the applicants withdrew the appeal in order to pave the way of rectifying the defect.

Thereafter, the applicants came back to Court and filed an application for extension of time to file the Notice of Appeal vide Misc, Land Application No. 329 of 2023 but the same was withdrawn on 21 July 2013.

On 2 August 2023 this application was filed.

To substantiate his submission Mr. Joachim referred this court to the decision of the Court of Appeal in **Bank M T. Ltd vs Enock Mwakyusa**, Civil Application 520 of 2017 (Tanzlii) where it was held that;

"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 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 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."

Mr. Joachim further submitted that in this present application only 10 days lapsed after withdrawal, because the pleadings would need preparation. He cited **Vodacom Tanzania Public Limited Company vs. Commissioner General Tanzania Revenue Authority**, Civil Application No. 101/2020 Of 2021) where it was held that;

"From the foregoing, the underlying question is whether the 9 or even 10 days for the sake of argument are reasonable to prepare such an application and file. I am of the view that the said days are reasonable since they were spent preparing and filling the current application."

In response, Ms Kikala, submitted that granting extension of time is totally Court discretion and the same has been cemented in number of decisions including; in the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustee Of Young Women's**

Cristian Association of Tanzania. Civil Application No. 2 of 2010 CAT Arusha (Unreported) at page 6 and 7, where the Court held that:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But the 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. On the authorities however, the following guidelines may be formulated: -

- a) The Applicants must account for all the period of delay*
- b) The delay should not be inordinate*
- c) The Applicants 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 to sufficient importance; such as the illegality of the decision sought to be challenged."*

From above Ms. Kikala challenged the application by arguing that the applicants failed to account for each day of delay in their affidavit as it was not explained on what the applicants were doing from 21 July 2023 up to when they filed the application. Therefore, applicants have not accounted for 10 days delay and no sufficient reason had been adduced to suffice such a delay. To bolster her argument, she cited the cases of

Glory Shifwaya Samson vs. Raphael James Mwinuka Civil Application No. 506/17 of 2019 CAT at Dar es Salaam (Unreported) and **Bushfire Hassan Vs Latina Lucian Masanya** Civil Application No. 3/2007 (Unreported) where it was held that;

"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..."

Mr. Joachim filed the rejoinder but I don't see the reason to analyze the same here because it was a reiteration of what he had submitted earlier, in his submission in chief.

I have read and considered the applicant's written submissions as well as the authorities cited. The Court is asked to exercise its discretionary power to extend time within which to file a notice of appeal against decision of Land Case No. 9 of 2010. Therefore, the issue that has to be resolved is whether the applicants have shown a good cause for this Court to exercise its discretion in granting an extension of time to file notice of appeal out of time.

As to what may constitute a good case, the Court of Appeal in the cited case of **Lyamuya Construction Co. Ltd (Supra)** and also in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee and three**

others, Civil Application No 130/01 of 2020 (TanZlii), pointed out the following factors: -

- (a) To account for all 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 and*
- (d) The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

Therefore, this court has to consider and test if the applicants pass the test by showing a good or sufficient cause.

In the application at hand, the applicants have raised only one ground for seeking an extension; that they had earlier pursuing appeal which they filed on time at the Court of Appeal which later was withdrawn, and when they came back to this Court for extension of time, the application was also withdrawn for being defective. That last application was withdrawn on 27 July 2023 and the instant application was filed on 02 August 2023

Therefore, the period of limitation between 27 June 2014 when decision of land Case No. 9 of 2010 was delivered until 21 July 2023 when Misc. Land Application No. 329 of 2023 was withdrawn has been justified to be a technical delay which amount to a good cause in extending time.

Further, it is a common ground that, re-filing the struck out or withdrawn (with leave to refile) application in the extension of time is not a new phenomenon in our jurisdiction, as the Court of Appeal has already put it succinctly in several cases.

In **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Tanzlii), it was held that the prosecution of an incompetent appeal when made in good faith and without negligence, ipso facto constitutes sufficient cause for an extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay.

Having gone through the record and submission, there is no evidence of bad faith and negligence.

Flowing from above, it is; therefore, the period between the institution of the appeal at the Court of Appeal, pursuing other applications, and when this Court withdrew the application for extension of time on 21 July 2023, has been justified that the same is a technical delay. The applicants were pursuing the matters which were later found to be incompetent.

As to the period between 21 July 2023 when the previous application was withdrawn and when this application was filed on 2 August

2023, the delay is ten (10) days, and the question is whether ten days can be considered an inordinate delay.

This is not a new phenomenon in our jurisdiction, as the Court of Appeal in **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314 of 2019 (Tanzlii), held that;

"The test to determine promptness is the question of fact which has to be decided on a case-by-case basis."

In that decision, the Court of Appeal found that 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-out appeal, and preparing a meaningful application for an extension of time.

In the case of **Emmanuel Rurihafi** (Supra), the Court of Appeal quoted its other decisions with a similar issue. Those cases are;

One, **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi**, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the case and observed that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate.

Two, Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) vs. Mtumwa Moshi (as the Administrator of the Estate of the late Risasi Ngwale), Civil Application No. 407/17 of 2019, where also a single justice of appeal observed that a period of less than 30 days is a reasonable time.

In this matter, I think ten days for preparing this application for extension of time taking into account the number of applicants is reasonable. The applicants acted promptly, and there is no inordinate delay.

Consequently, the applicants advanced a good and sufficient ground to warrant this court to exercise its discretion in granting an extension of time.

In the upshot, I grant this application for an extension time. The applicants shall file notice of appeal within twenty-one (21) days from the date of delivery of this Ruling. Further, I order no costs.

It is so ordered.



K. D. MHINA
JUDGE
09/11/2023

