

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

MISC LAND APPLICATION NO. 497 OF 2023

(Arising from Land Case No. 152 of 2011)

**ALLY KILIMBITI CHUBI (As an administrator of the late
KILIMBITI CHUBI).....1ST APPLICANT**
**ASHA OMARY MPUNDE (As an Administrator of the Late
ABDALA MWALIMU BOFFU)2ND APPLICANT**
HAWA MBWALI.....3RD APPLICANT

VERSUS

JOEL MABULA SHIMBA.....RESPONDENT

RULING

17/10/2023 to 27/11/2023

E.B. LUVANDA, J

This is an application for extension of time, where the Applicants above seek to file notice of appeal and leave of appeal out of time against the decision of this Court dated 01/02/2017 in Land Case No. 152/2011.

In the joint affidavit in support of the application, the Applicants grounded technical delay in prosecuting Civil Appeal No. 375/2019 at the Court of Appeal, which was withdrawn on 10/02/2023; demise of the Second Applicant where the administratrix of his estate was appointed on 16/05/2023 as per the letter

of appointment annexure AAH1 to the affidavit; struggling financially to access justice, lay folk.

In the counter affidavit, the Respondent stated that the Applicants wasted six months staying at home, faulted the chamber summons that it contain two district (sic, distinct) prayers.

Along the counter affidavit, the Respondent raised preliminary objection.

The preliminary objection was argued along the application on merit.

Mr. Saiwello T.J. Kumwenda learned Counsel for Respondent, submitted that the application is unmatinable for being omnibus. The learned Counsel submitted that one cannot simultaneously pray for extension of time and leave.

He cited **Nuridin Mohamed vs. Salum Said Mtiwe & Another**, Misc. Civil Application No. 29/2021. For the second objection, the learned Counsel submitted that the Applicant have invoked a law which do not exist, that is the Appellate Jurisdiction Act, Cap 141 20. He cited **National of Bank Commerce vs. Sadrudin Meighji** (1998) TLR 504. Objection number three, the learned Counsel submitted that the registry mentioned on top of the application is not specific, arguing there is a High Court of Zanzibar and Tanzania, which may meant either High Court of Zanzibar or United Republic of Tanzania.

Ground number four, the learned Counsel submitted that paragraph nine contain a prayer. He cited the famous **Uganda vs. Commissioner of Prisons Exparte Matovu** (1961) EA 514.

Ground number five, the learned Counsel said there is no certificate of delay.

Ground number six the learned Counsel said no any copies of judgment, decree and proceedings have been served to the Respondent.

In opposition to the preliminary objection the Applicants submitted that ground number three, five and six are not preliminary objection, arguing preliminary objection must be on point of law and not fact. They cited **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd** (1969) EA 696.

For the objection number one, the Applicants submitted that prayers sought are from one provisions, argued the applicant is not omnibus. They cited **Alaf Limited vs. The Board of Trustees of the Public Service Social Security Fund (PSSF) & Another**, Civil Application No. 529/01 of 2023.

On the second objection, the Applicant conceded that the statute was not fully cited thus the Appellate Jurisdiction Act Cap 141 R.E. 2019, They submitted that the omission cannot prejudice determination of the application.

On ground number four, the Applicants submitted that averments in paragraph nine does not suffice to be a prayer.

On my part, the first ground of objection is devoid of merit whatsoever. The two reliefs sought, that is extension to file notice of appeal and leave of appeal, are provided in the same provision section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019. As such the question of omnibus does not arise.

On the second point of objection, as per the concession of the Applicants, a mere omission where the Applicant cited a half year 20 instead of 2019, is a clerical, human and topographical error which is not fatal. It is a settled position that wrong citation is not fatal.

On ground number four, going by the averments in paragraph nine to the affidavit, there is no any element of a prayer. The phrase "humbly applying for" is for fetched from an ordinary prayer within the purview and restrictions in *Exparte Matovu* (supra).

Regarding objection number three, five and six are not worthy point of law for argument. I wonder why and how were inserted in the notice and argued by the learned Counsel for Applicants.

In totality, the five objections are devoid of merit. They are all overruled.

In the merit of application, the Applicants submitted that they have been prosecuting Civil Appeal No. 375/2019, un represented, due to financial constraints and in capability. They pleaded to be layperson to court related legal matters. They submitted that they have been fighting with difficulties and

assisted their colleague Second Respondent with a probate cause and take them more time to raise the fund to proceed with this application.

In reply, the learned Counsel for Respondent submitted that the Applicants were required to explain on reasons for delay, length of delay, chances of success, accounting for each day of delay. He submitted that the Applicants failed to give reasons for their delay. He submitted that the Applicant have delayed for six years from 01/02/2017 when the impugned judgment was delivered to 14/08/2023 when this application was filed. He submitted that the Applicants delayed for six months from 10/02/2023 when their appeal was withdrawn to 14/08/2023 when this application was filed. He submitted that a period of six months is too long. He submitted that the Applicants failed to account on each day of delay. He cited the case of **Bushir Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3/2017**, for a proposition that delay of even a single day has to be accounted for.

On rejoinder regarding reasons for delay the Applicants submitted that it was due to legal process of petitioning for grant of letters of administration in respect of the estate of Abdallah Mwalimu Boffu. They pleaded to have been prosecuting Civil Appeal No. 375/2019 which was withdrawn on 10/02/2023 argued the time should be computed from there up to 14/08/2023 when this application was filed.

It is true that the general rule is that every day of delay must be accounted for. Herein, the Applicant were busy prosecuting Civil Appeal No. 375/2019 which was dully filed in time to the Court of Appeal and the same was withdrawn on 10/02/2023 due to technical fault.

In paragraph eight of the affidavit, the Applicants attached form No. 4 for appointment of the administratrix of the late Abdallah Mwalimu Bofu who passed away on 16/5/2023 when Civil Appeal No. 375/2019 was pending at the apex Court. According to annexure AAH4 depict the grant or appointment was made on 16/05/2023.

For the above reasons, I am of the opinion that the Applicants are entitled to be accommodated under technical delay. I therefore grant extension of time to the Applicants to file notice of appeal and leave of appeal (if at all is still relevant and applicable), within fourteen days, counting from the date hereof.

The application is granted. No order for costs.



E. B. LUVANDA
JUDGE
27/11/2023

Ruling delivered in the presence of the Applicants and Mr. Saiwello T.J.

Kumwenda learned Counsel for Respondent



E. B. LUVANDA
JUDGE
27/11/2023