

Original

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

MISCELLANEOUS LAND APPLICATION NO. 560 OF 2023

(Arising from Land Appeal No. 210/2017)

ASHA WAZIRI.....APPLICANT

VERSUS

EFC-BANK TANZANIA LTD alias EFC-BANK TANZANIA

MICRO FINANCE BANK LIMITED.....1ST RESPONDENT

MICHAEL TARA MWAMI.....2ND RESPONDENT

DEBT STAR & AUCTIONEER.....3RD RESPONDENT

STANLEY JOSHUA SHIMWELA.....4TH RESPONDENT

RULING

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29/11/2023 to 26/12/2023

E.B. LUVANDA, J

The Applicant above mentioned is seeking for extension of time within which to lodge notice of appeal and application for leave, out of time against the decision of this Court dated 28/11/2018.

In the affidavit in support, the Applicant grounded technical delay in prosecuting an application for leave Misc. Land Application No. 920/2018 and Civil Appeal No. 292/2021 which was withdrawn on 20/8/2023 along a notice

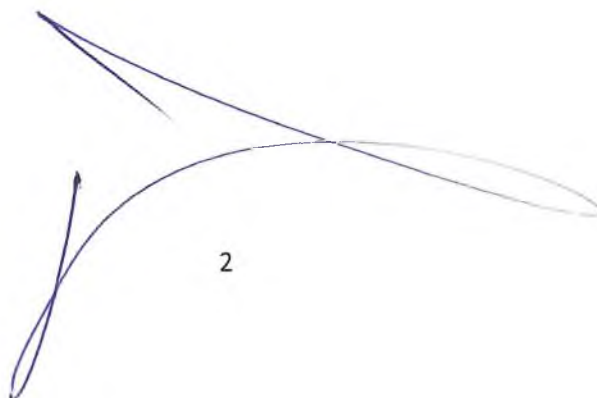
of appeal filed on 5/12/2018, for reasons that a letter dated 28/11/2028 for requesting a copy of judgment was not served to the Respondent.

In the counter affidavit, the Respondent accused the Applicant for negligence, for reasons that the Applicant failed to account on each day of delay from 5/12/2018 when she filed a notice of appeal to 26/07/2023 when she filed a withdrawal of notice of appeal.

Mr. Nehemia Gabo learned Counsel for Applicant filed submission in chief, essentially in reiteration of averments contained in the affidavit in support of application. He cited a case of **Vodacom Tanzania Public Co. Ltd vs Commissioner General (TRA)**, Civil Application No. 465/20 of 2019 CAT.

In reply, Mr. Steven Mayombo learned Counsel for Respondent submitted that the Applicant acted negligently, arguing the Applicant cannot take amnesty of the purported technical delay.

To my view, the reason for delay to wit technical delay in prosecution an application for leave Misc. Land Application No. 920/2018 and Civil Appeal No. 292/2021 which was withdrawn on 20/8/2023, is well grounded and founded. This because everything was filed on time, including a notice of appeal.



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And in view of the fact that this application was filed on 6/09/2023 being almost sixteen days from the withdrawal on 20/08/2023, it is taken therefore that the Applicant managed to account cumulatively for the whole period of delay from 5/12/2018 when the notice of appeal was filed to 20/08/2023 when the appeal and notice of appeal was withdrawn.

However, the application for extension of time for leave to appeal is overtaken by event in view of new development introduced vide The Legal Sector Laws (Miscellaneous Amendments) Act No. 11 of 2023 section 10 which made Amendment to the Appellate Jurisdiction Act, Cap 141 effectively 1st of December, 2023 in particular section 5 by deleting subsection (1) and substituting for it the following,

'In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an ex-parte or preliminary decree made by the High Court, in the exercise of its original, appellate or revision jurisdiction'

In the case of **Modestus Daudi Kangalawe (Administrator of the Estate of the Late Daudi Temaungi Kangalawe vs Dominicus Utenga**, Civil Reference No. 01 of 2022, CAT sitting at Iringa, at page 7

made it clear that currently the application for leave to appeal is not a legal requirement.

The same position was taken in **Petro Robert Myavilwa vs Zera Myavilwa & Another**, Civil Application No. 117/06 of 2022 CAT at Mbeya, at page 6 to 7, propounded,

'As alluded to earlier, the application at hand seeks for extension of time to apply for leave to appeal to Court so as to challenge the decree of the High Court when exercising its appellate jurisdiction in Probate Appeal No. 1 of 2018. The changes, being procedural law which its applicability has retrospective effect, has a bearing to the application at hand in my view. As rightly submitted by Mr. Chappa, leave is no longer a requirement at the wake of the said amendment. As such, this application has been overtaken by event and the only remedy is to struck it out as I hereby do'

Therefore, the Applicant is granted extension of time to lodge notice of appeal, within fourteen days counting from the date hereof. The application for leave to appeal is struck out for being overtaken by event.

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
20/12/2023