

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

MISC. LAND APPLICATION No. 653 OF 2023

SABATH JACKSON MKUMBATI.....1ST APPLICANT

SARAH SABATH MKUMBATI.....2ND APPLICANT

VERSUS

JAVIS INTERNATIONAL TRADE COMPANY LTD.....1ST RESPONDENT

AFRICAN BANKING CORPORATION COMPANY.....2ND RESPONDENT

RULING

20th November 2023 & 15th December 2023

L. HEMED, J.

The instant application is made under section 11(1) of the Appellate Jurisdiction Act, [Cap.141 RE 2019] as well as Rule 45(a) and 47 of the Court of Appeal Rules of 2019. The applicants herein, **SABATH JACKSON MKUMBATI** and **SARAH SABATH MKUMBATI** were the plaintiffs in Land Case No.151 of 2018. They lost it after having failed to prove their claims as it ended up being dismissed with costs.

It appears that the applicants were aggrieved by the decision of this court which was delivered on 15th September 2021 by Hon. B.S. Masoud, J. (as he then was). They lodged Notice of Appeal on 30th September 2021



and later on filed Civil Appeal No.161 of 2022 at the Court of Appeal of Tanzania. In the course of hearing the appeal, the Court of Appeal found the Appeal before it incompetent for want of proof of service of both the Notice of Appeal and record of appeal to the 1st respondent. Consequently thereof, the Appeal was struck out on 21st day of September 2023, hence the instant application seeking for extension of time to re-file Notice of Appeal to Appeal to the Court of Appeal of Tanzania.

The application is supported by the joint affidavit deponed by both applicants. The 1st respondent could not appear and or challenge the application despite being duly served. Only the 2nd respondent who could not let the application go unchallenged. She disputed it through the counter affidavit of PETER KIBATALA advocate of the 2nd respondent.

Hearing was by way of written submissions. **Mr. Daniel Ngudungi**, learned advocate, represented the applicants while the 2nd Respondent enjoyed the legal service of **Mr. Peter Kibatata**, learned counsel. All submissions were promptly filed pursuant to the scheduling order made by this court on 20th November 2023.



In this application, the applicants have relied on the grounds of technical delay and illegalities. Submitting on the ground of technical delay, Mr. Ngudungi argued that most of the time was wasted in prosecuting the incompetent Civil Appeal No.161 of 2022 in the Court of Appeal of Tanzania. He cemented his argument by the decision of the Court of Appeal in **Mary Mchome Mbwambo and Amos Mbwambo (as joint administrators of the estate of the late Gilliad Mbwambo) vs Mbeya Cement Company Ltd**, Civil Application No. 271/01 of 2016 and **Director General of LAPF Pension Fund vs Pascal Ngalo**, Civil Application No.76/08 of 2018.

With regard to irregularities in the impugned decision he asserted that the successor judge did not assign reasons for taking over the case. He put reliance in **Lyamuya Construction Limited vs Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010.

In reply, Mr. Kibatala viewed that the applicants have not demonstrated good cause for extension of time. In his opinion the applicants were negligent in handling the matter. According to him,



technical delay in itself is not a good cause for extension of time if the applicant(s) are found to be negligent.

The question for determination is whether good cause has been demonstrated to warrant the court to grant the application. I have gone through the record of this matter to find out if at all the alleged technical delay suffices a ground for extension of time. In fact I found that the applicants were diligent in pursuing the appeal. This is evidenced by the fact that the impugned judgment in Land Case No.151 of 2018 was delivered on 15th September 2021, and the Notice of Appeal was filed on 30th September 2021.

I have also noted that the applicants managed to institute Civil Appeal No.161 of 2022 at the Court of Appeal of Tanzania, only that it ended up being struck out on 21st day of September 2023 for want of competence. Immediately thereafter, they filed the instant application. In my opinion, the time spent in prosecuting Civil Appeal No.161 of 2022 is a technical delay which the court needs to consider when determining whether or not to grant the application for extension of time. I am holding so because it is settled that technical delay is among the recognised grounds for extension of time. In **Director General of LAPF vs Pascal**



Ngalo, Civil Application No.76/08 of 2018, the Court of Appeal of Tanzania had this to observe:-

"A distinction had to be drawn between cases involving really or actual delays and those such as the present one which 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 fact the circumstance of the instant case is similar to that in **Director General of LAPF vs Pascal Ngalo**, (supra). Above all, I have noted that the applicants were so diligent as they acted promptly in filing the instant application immediately after the order of the Court of Appeal of Tanzania to strike out their Appeal. Based on the ground of technical delay, I find no reason of refusing the application. I do hereby proceed to grant the application with no orders as to costs. The applicants to file the Notice of Appeal within 14 days. It is so ordered.

DATED at DAR ES SALAAM this 15th December 2023.




L. HEMED
JUDGE