

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 554 OF 2022**

(Arising from Misc. Land Application No. 388 of 2021 Originating from  
Land Case No. 239 of 2017)

**SALUM A. KUNGUGE..... APPLICANT**

**VERSUS**

**MAENDELEO BANK PLC ..... 1<sup>ST</sup> RESPONDENT**

**DESTENI COMPANY LIMITED 2<sup>ND</sup> RESPONDENT**

**RULING**

Date of last Order: 03.02.2023

Date of Ruling: 08.02.2023

**A.Z. MGEYEKWA, J**

I am called upon in this matter to decide whether this court should exercise its discretion under section 11 (1) of the Appellate Jurisdiction Act, Cap.

141 [R.E 2019] to extend time within the applicant to lodge a Notice of Appeal against the decision of this Court in Misc. Land Application No.

388 of 2021 dated 11th October, 2021. The application is supported by an affidavit and supplementary affidavit deposed by Salum A. Kunguge, the applicant. The 1<sup>st</sup> respondent resisted the application and demonstrated his resistance by filing a counter affidavit,

deponed by George Kihongozi, Kakolwa. The application proceeded *ex parte* against the 2<sup>nd</sup> respondent upon proof of service.

When the matter was called for hearing on 20th December, 2022, the applicant appeared in person and the 2<sup>nd</sup> respondent enlisted the legal service of Ms. Wivina Karoli Benedicto, learned counsel. By the court order, the application was argued by way of written submission whereas both parties complied with the Court order.

In his written submission, the applicant submitted that he is seeking for extension of time to file a Notice of Appeal out of time and serve the respondents with a copy of a letter requesting copies of the impugned Ruling and drawn order in Misc. Land Application No. 388 of 2021. The applicant submitted that in the application for an extension of time, the applicant is required to show sufficient cause for his delay to file an appeal within time in Misc. Land Application No. 135 of 2014 originating from Mabibo Ward Tribunal and the Court after being satisfied may invoke its discretionary power to grant the same.

The applicant went on to submit that the impugned Ruling which was delivered on 7th October, 2021 is tainted with irregularity and illegality. He argued that Hon Judge mistakenly dismissed Misc. Land Application No. 388 of 2021 instead of striking it out while this Court already found that the application was incompetent before the Court. He stated that the proper remedy was striking out the application to allow the applicant to take the necessary steps. To buttress his position, he cited the case of **Ngoni**

**Matengo Cooperative Marketing Union Ltd v Mohamed Osman** (1959) E.A 577 and **Emmanuel Luoga v Republic**, Criminal Appeal No. 81 of 2013 both cases were cited with approval by the Court of Appeal of Tanzania in **Yahya Khamis v Hamida Haji Idd, Adventina Andrea & Diodes Martin**, Civil Appeal No. 225 of 2018 (unreported). He insisted that illegality is a good reason for an extension of time. Supporting his position he cited the case of **VIP Engineering Marketing Ltd v City Bank Tanzania Ltd** (2021) TZCA 112. In conclusion, the applicant urged this Court to grant his application.

Objecting to the application, in his written submission, the 1<sup>st</sup> respondent's counsel urged this Court to adopt the counter affidavit deposed by George Kihongozi, the applicant to form part of his submission. Ms. Wivina contended that the applicant filed the instant application on 13.09.2022 seeking an extension of time to file a Notice of Appeal and serve the respondents with the letter requesting for proceedings. She submitted that the Notice of Appeal was supposed to be lodged within 30n days from the date of the impugned decision. To support her submission she referred this Court to Rule 83 (2) of Tanzania Court of Appeal Rules, 2009. The learned counsel for the applicant went on to submit that the law requires in every application for an extension of time the applicant to show that there are good reasons for his delay. Fortifying her submission she referred this Court to Rule 10 of Tanzania Court of Appeal Rules, 2009, and section 14 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019],

Ms. Wivina continued to submit that the applicant in his affidavit did not state any reason for his delay to file the Notice of Appeal out of time thus the respondents are unable to

know the cause of his delay. To bolster her submission she cited the case of **Zawadi Mwemakweli v NMB Bank PLC**, Civil Application No. 221 of 2008, CAT (unreported).

She stressed that the instant application is demerit.

On the strength of the above submission, the 1<sup>st</sup> respondent's counsel beckoned upon this court to dismiss the applicant's application with costs.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal. The central issues for consideration and determination are whether or not the applicant has shown good cause to justify his application.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the decree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal; whether there is a point of law of sufficient importance. There are a plethora of legal authorities in this respect. See the cases of **M.B Business Limited v Amos David Kassanda & 2 others** Civil Application No.48/17/2018 and the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania

decisively held:-

*“It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time*

out by Ms. Wivina that the impugned Ruling was delivered on 07.10.2021 and the applicant lodged the instant application on 13.09.2022. in accordance with Rule 83 (2) of the Tanzania Court of Appeal Rules, 2009 the applicant was supposed to file his appeal within 30 days of the date of the decision against which it is desired to appeal. Counting the days from 06.11.2021 to 13.09.2021, it is lapsed of 11 months. I am in accord with Ms. Wivina that the applicant has failed to account for each day of delay, as a result, this ground is demerit.

Regarding the ground of illegality. The legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for an extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

***"... The Court emphasized that such a point of law must be of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process." [Emphasis added].***

Applying the above authorities, the ground of illegality that has been cited by the applicant is not apparent on the face of the record. His allegation that the impugned Ruling is tainted with illegality because the Hon. Judge was supposed to strike out the

application instead of dismissing it unfounded because the same requires long drawn argument or process. Therefore, in my considered view, this point of illegality does not meet the requisite threshold for consideration as the basis for the enlargement of time.

In sum, based on the foregoing analysis, I have no other choice than to dismiss the instant application with costs.

Order accordingly.

Dated at Dar es Salaam this date 8<sup>th</sup> February, 2023.



Z.MGEY^KWA

A

**JUDGE**

08.02.2023

Ruling delivered on 8<sup>th</sup> February, 2023 in the presence of the applicant and Ms. Wivina Karoli Benedicto, counsel for the respondents.



A.Z.MGE YEKWA

**JUDGE**

08.02.2023