

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND CASE APPLICATION NO. 606 OF 2022**

BETWEEN

HAMISI AMRI IDD..... APPLICANT

VERSUS

MOHAMED O. MWANDWANGA.....RESPONDENT

RULING

Date of last Order: 14/12/2022

Date of Ruling: 08/02/2023

A. MSAFIRI, J.

The applicant Hamis Amri Idd has lodged this Application under section 32 (1) of the Land Disputes Courts Act, Cap. 216 R.E 2019. He is seeking for the Court's leave to file an application for a certificate of point of law out of time against the judgment of this Court in Misc. Land Appeal No. 16 of 2022 dated 30th May 2022.

The application is supported by an affidavit of the applicant himself and is being contested by the respondent who has also filed a counter affidavit.

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The application, with the leave of the Court, was argued by way of written submissions. Both parties appeared in person and were unrepresented.

The central issue in application for extension of time is always whether the applicant has advanced good cause for the delay. This is envisaged under a string of authorities both of this Court and the Court of Appeal. (see for instance the cases of **Lyamuya Construction Co. Ltd vs Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Sebastian Ndaula vs. Grace Rwamafa**, Civil Application No. 4 of 2014, etc.)

Guided by the above cited authorities, this Court has discretion to extend the time which is being sought, after having taken into account factors which have been outlined in the said authorities. Those factors are not necessarily exhaustive but at the moment, they include cause of delay, length of delay, whether or not the applicant has accounted for the delay, degree of prejudice to the respondent and whether there is illegality apparent on the face of the record of the decision sought to be challenged.

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The reason for delay is reflected in the applicant's affidavit as well as in his written submission in chief. The applicant has averred that being dissatisfied with the decision of this Court which was delivered on 30th May 2022, he lodged the notice of appeal and served the respondent. A copy of the same is attached with an affidavit and it shows that the same was filed on 26th June 2022.

He submitted further that he filed an application for the certification of point of law, which is Application No. 342 of 2022 before this Court. However, on 30th August 2022, the Court noticed *suo motu* that there was no notice of appeal attached with the Application and summoned the applicant to address on the matter. The applicant admitted that he did not know about the notice and prayed to withdraw the application. The application was marked withdrawn with costs.

In the present application, the applicant averred that, being a layman, he did not know about the notice of intention to appeal. That after seeking and getting legal assistance, it was discovered that the notice of appeal was filed on time but he could not understand why the Registry officer failed to put the said notice of appeal along with the application. He urged the Court to grant this application as the intended application for certificate of point of

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law has overwhelming chance of success. To buttress his points, he referred this Court to the case of **Copper vs. Smith** (1884) 26 C.L.D, 700.

In response, the respondent vehemently opposed the application and contended that the applicant is under the legal aid of Legal and Human Rights Centre (LHRC) so he cannot claim that he is a lay person while he had an advocate representing him. The respondent added that, the stated reason for the delay is not a sufficient cause for extension of time as ignorance of law is no defence.

He submitted further that, it is the requirement of the law for the applicant to account for each day of delay and the applicant was required to account for each day of delay as from 30th May 2022 to 28th June 2022. To support his arguments, he cited various cases including the case of **Lyamuya Construction Company Ltd (supra)**.

He concluded that, the reason advanced by the applicant is insufficient for the purpose of extension time.

In rejoinder, the applicant pointed that the respondent's submission are devoid of merit. That, the argument that the applicant has enjoyed legal representation of LHRC under advocate Felister Rugazia is not true as the

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said advocate was used to draft only documents and not to represent the applicant in Court. He prayed for the Court to uphold the application with costs.

As it has been observed, the major reason for delay advanced by the applicant is the fact that he was unaware/did not know that the notice of appeal has to be attached with the application for certification of points of law. That being a layman, he did not know why the Notice of appeal was not filed alongside other documents. He shifted the blame to the Court Registry officer whom he said failed to put the said notice of appeal in the Court file.

However, I agree with the respondent's submissions that ignorance of law cannot be a defence in this matter. In addition, the applicant has raised an allegations to the unnamed Registry officer, the same which I find to be serious allegations directed to the Court but with no any proof whatsoever.

Furthermore, the applicant has failed to account for each day of delay from 30th August 2022 when the Application No. 342 of 2022 was withdrawn to 27th September 2022 when this application was filed in Court, being a total of 26 days. The applicant has not advanced any explanation in his affidavit. In the submission, the applicant has merely pointed that after the application

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was withdrawn, he went to a lawyer who advised him to write a letter requesting for a copy of proceedings. He did not state when he went to the said lawyer, when did he wrote a letter requesting for a copy of proceedings and when did he got the said copy of proceedings.

The applicant was mandatorily required to account for each day of delay.

Basing on the above analysis, I find that the applicant has failed to show sufficient cause for this Court to exercise its discretion and extend the time sought. For this reason, this application is hereby dismissed with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written over a horizontal dotted line.

A. MSAFIRI
JUDGE
08/02/2023