

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

MISC. LAND APPLICATION NO. 578 OF 2022

MOHAMED SELEMAN MASANJA.....APPLICANT

VERSUS

MBARAKA A.M. BASALARESPONDENT

Date of Last Order: 08.12.2022
Date of Ruling: 13.02.2023

RULING

V.L. MAKANI, J

The applicant MOHAMED SELEMAN MASANJA is applying for extension of time within which to lodge Notice of Intention to appeal to the Court of Appeal of Tanzania against the judgment and decree of this Court in Land Appeal No.106 of 2017 (Hon. Makuru, J). The application is supported by the affidavit and supplementary affidavit sworn by Rosan Mbwambo, Advocate for the applicant. This application has been preferred under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 RE 2019.

With leave of the court the application was argued by way of written submissions. Ms. Salma Abdallah, Advocate drew and filed

submissions on behalf of the applicant, while Mr. Richard K. Rweyongeza, Advocate drew and filed submissions in reply on behalf of the respondent.

Ms. Abdallah prayed to adopt the contents of the two supporting affidavits. She said that as per paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 as well as paragraphs 4, 5, and 7 of the supplementary affidavits demonstrates sufficient reasons warranting this court to condone the delay. That the delay was unforeseeable and was beyond control of the applicant. That it was not negligence or inaction on the part of the applicant. That the affidavit and circumstances therein demonstrate diligence on the part of the applicant. That there is also illegalities and irregularities demonstrated at 19 and 20 of the affidavits. She relied on the case of **Alliance Insurance Corporation vs. Arusha Art Limited, Civil Application No.512/2 of 2016** (CAT-Arusha) (unreported) and the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustee of Yong Women's Christian Association of Tanzania, Civil Application No.2 of 2010** (unreported). She prayed for the application to be granted.

In reply, Mr. Rweyongeza prayed to adopt the contents of the counter affidavit sworn by Protase Zake Kato. He said the applicant wrote a letter applying for proceedings and omitted to serve the respondent with the said letter. That the applicant has failed to account for the period between 07/12/2018 to 07/06/2022. That the applicant ought to have applied for extension of time to serve the respondent with the letter at the time he was waiting to be supplied with the proceedings. He said there is no reason advanced by the applicant as to why he did not serve the letter and or apply for extension of time. According to him if the applicant's advocates had exercised due diligence, they would have applied for extension of time to file appeal out of time instead of lodging the appeal. He further said the reasons advanced by the applicant are not sufficient in terms of the case of **Lyamuya Construction Company Limited** (supra). He said illegality under paragraph 19 of the supporting affidavit have been supplied as the second reason for delay, but illegality must be on the face of the record in terms of the case of **Lyamuya Construction Company Limited** (supra). He observed that in the case at hand illegality is not on the face of the record and it can only be discovered by long process in the proceedings. He prayed for the application to be dismissed with costs.

The applicant did not file submissions in rejoinder. In considering this application the main issue for determination is whether this application has merit.

It has been stated time and again that extension of time is the discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise such discretion. Among the principles, though not exhaustive was stated in the case **Lyamuya Construction Company Limited** (supra). The Court of Appeal outlined the following four factors to be considered:

- (a) The applicant must account for all the period of delay.*
- (b) The delay should not be inordinate*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The reasons for delay by the applicant are that he lodged the appeal on time, but it was later discovered that the letter requesting for

proceedings, judgement and decree was not served to the respondent within time as required by the law. Thus the appellant (applicant herein) decided to withdraw the appeal for purpose of rectifying the procedure of appeal and serve the courts time.

From the records, the facts which are not in issue are that the impugned decision was delivered on 15/11/2018. On 07/12/2018 the applicant requested vide a letter, copies of judgment and proceedings (**Annexure M-2**). All these were within time. The records further show that the said copies were supplied to the applicant on 07/06/2022 (**Annexure M-3**). He on 01/08/2022 lodged to the Court of Appeal Civil Appeal No.352 of 2022 and then applied to withdraw the same on 08/09/2022. The said appeal was indeed withdrawn by the Court of Appeal on 14/09/2022 and this application was filed on 20/09/2022 as per Exchequer Receipt No.24552946.

In my considered view, these facts as narrated above, show that the applicant has not stayed idle from when the impugned decision was delivered to the date of filling this application. I am aware of Mr. Rweyongeza's concern that failure to properly serve the letter to the respondent was negligence on the part of the applicant. But the

records show that the applicant's current lawyers after discovery of the omission, immediately started the proper process for filing an appeal, including the filing of this application (see paragraphs 12 to 17 of the affidavit) and (paragraphs 4 to 7 of the supplementary affidavit). If one keenly looks at the record, he will find that there was no inordinate delay in between every action taken by the applicant towards his intended appeal. It apparent therefore that the applicant has showed diligence towards his intention to pursue the intended appeal.

In the result, the application has merit, and extension of time to file Notice of Intention to Appeal to the Court of Appeal is hereby granted. The applicant to file the said Notice within **21 days** from the date of this ruling. There shall be no order as to costs.

It is so ordered.




V.L. MAKANI
JUDGE
13/02/2023