

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**MISC. LAND APPLICATION NO. 22 OF 2022**

(From the High Court of Tanzania at Mbeya in Land Appeal No. 04 of 2020. Originating From the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 235 of 2018.)

**SINA WILSON WALONDE @ UPENDO WALONDE.....1<sup>ST</sup> APPLICANT  
JOB MWINUKA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**PROSPER EVARIST SANGA.....RESPONDENT**

**RULING**

Date of Hearing: 09/06/2022  
Date of Ruling : 01/09/2022

**MONGELLA, J.**

In the application at hand, the applicants are seeking for enlargement of time to lodge an application for leave to appeal to the Court of Appeal against the decision of this Court (Utamwa, J.) rendered in Land Appeal No. 4 of 2020. The application is brought under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and supported by the joint affidavit of the applicants.



In their joint supporting affidavit and the oral submission by their counsel, Ms. Irene Mwakyusa, they explained the reasons for delaying to the effect that: after the impugned decision was delivered, they immediately applied for leave to appeal to the Court of Appeal vide Misc. Application No. 59 of 2001. The application was however struck out for having incurable defects on 05<sup>th</sup> November 2021. After being struck out, they followed up on the Order of the Court whereby on 28<sup>th</sup> February 2022 they were called by a registry clerk, one Patrick Nundwe, informing them that the copies were ready for collection. That it was on the same date they collected the copies of the Court decision. The affidavit of the said Patrick Nundwe was attached to that effect.

Ms. Mwakyusa continued to argue that after collecting the Court decision, the applicants got bereaved whereby they lost their grandmother and had to travel to Makete for burial ceremony. They never communicated to their counsel until on 15<sup>th</sup> March 2022 when they came back and instructed Ms. Mwakyusa to prepare the application at hand. She prepared the same on 16<sup>th</sup> March 2022 and filed it on 17<sup>th</sup> March 2022. She thus prayed for the application to be granted.

The respondent was represented by Mr. Boniface Mondu, learned advocate. Adopting the counter affidavit of the respondent he challenged the application on three grounds. First, he argued that the appellants stated that they followed up on a written letter but the letter was never presented. He as well disputed the affidavit of the said Patrick Nundwe contending that the court documents were ready for collection



on 28<sup>th</sup> December 2021 as they obtained the same on that date and filed a Bill of Costs on 31<sup>st</sup> December 2021.

Second, he argued that even if the copies were ready on 28<sup>th</sup> February 2022, the applicants have failed to explain where they were for 4 days before they got bereaved on 05<sup>th</sup> March 2022. Referring to the case of ***Kibo Hotel Kilimanjaro Ltd. vs. The Treasury Registrar & Impala Hotel Ltd.***, Civil Application No. 502/17 of 2020 he contended that each day of the delay has to be accounted for, but the applicants failed to account for delayed days.

Third, he challenged the appellant's reason that they got bereaved and attended a funeral. He said that they failed to present any documentary evidence, including travel tickets. He added that the appellant, in their affidavit, failed to explain the date they returned. Explaining on the delayed dates he said that the appellants stated that their grandmother passed away on 05<sup>th</sup> March 2022 and the application was filed 12 days thereafter. He considered the 12 days a long period for one who lost a grandmother.

Lastly, he commented on the date of filing the application whereby he argued that in accordance with the court's filing system "JSDS" it is evident that the application was filed on 31<sup>st</sup> March 2022. He said that as per the electronic filing rules, the date of filing is the date the matter was filed online. He had the firm view that the applicants have failed to account for the delay from 28<sup>th</sup> February 2022 to the date of electronic filing, which was 31<sup>st</sup> March 2022. He concluded that the appellants have





failed to advance good cause to entitle them being granted the extension of time sought. He prayed for the appeal to be dismissed with costs.

Ms. Mwakyusa briefly rejoined. Regarding the date when the Ruling of the Court was ready for collection, she argued that the evidence to be relied on is the affidavit of the registry officer, Patrick Nundwe. With respect to the delayed 4 days between obtaining copies of the Ruling and attending funeral, she argued that the process of filing the appeal was initiated immediately. About the argument that there were no supporting documents on the travel to Makete, she contended that the appellants travelled by private car. As to the date of electronic filing, she contended that the issue is not raised in the respondent's counter affidavit and no any documentary proof has been provided to prove the assertion. She was of the view that the application at hand bears court stamp and the date of receipt which is 17<sup>th</sup> March 2022.

I have considered the arguments by the learned counsels, read the appellants' affidavit and the respondent's counter affidavit and gone through the record. As a matter of law, the application can only be granted where sufficient cause has been advanced. The delay must not have been caused or contributed by the dilatory conduct on applicant's part. See: **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (CAT, unreported); and **Jaluma General Supplies Limited v. Stanbic Bank Limited**, Civil Application No. 48 of 2014 (CAT, unreported). In that respect the applicant advanced two main reasons. one, that there was delay in obtaining copies of the Ruling that strike out their application;



and two, that they were bereaved immediately after obtaining the copies of the ruling and had to travel to Makete for burial of their grandmother.

With respect to the first reason, they contended that the Ruling was availed to them on 28<sup>th</sup> February 2022. To support their claim they furnished an affidavit of one Patrick Nundwe, a registry clerk. On the other hand, the respondent contended that the copies were ready on 28<sup>th</sup> December 2021 whereby they collected the same and filed a claim for Bill of Costs. In essence, the appellants failed to refute the respondent's assertion that he collected the copy of the Ruling on 28<sup>th</sup> December 2021 as it was ready on that day. In the submission by Ms. Mwakyusa, she only relied on the affidavit of the said Patrick Nundwe.

In my considered view, I find the averment in the affidavit of Patrick Nundwe doubtful for the following reasons: **one**, he makes reference to the applicants' request for the copies, but never mentioned the form in which the request was made. As argued by Mr. Mondu, the applicants ought to have submitted a letter requesting for the copies, but the same was never presented to support the averment by Patrick Nundwe that he responded to their request by calling them over the phone.

**Two**, since the respondent got his copy on 28<sup>th</sup> December 2021, it is impossible that the copies were ready for collection on 28<sup>th</sup> February 2022 as averred by the said Patrick Nundwe, unless an explanation by him as to why the copies were ready for the parties on different dates was provided. I therefore find this reason unsubstantiated as the affidavit of



the said Patrick Nundwe is untruthful and cannot be relied upon. In the case of **Damas Assey & Flora D. Assey vs. Raymond Mgonda Paula & Others**, Civil Application No. 32/17 of 2018 (CAT at DSM, reported at Tanzlii), the CAT while revisiting its previous decision in **Ignazio Messina vs. Willow Investments SPRL**, Civil Application No. 21 of 2001 held:

*"An affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue."*

On the second reason, I as well find the same unsubstantiated. The applicants claim to have gone to Makete for burial, but they have asserted mere words. No proof of their assertion was provided, particularly the travel documents. When the question was raised by Mr. Mondu in his reply submission, Ms. Mwakyusa while rejoining argued that the applicants had used private car thus did not have any travel tickets. With due respect, this assertion came from the Bar and therefore cannot be entertained. In the supporting affidavit the applicants never mentioned to have used private transport to Makete.

In further consideration, the applicants had engaged Ms. Mwakyusa as their counsel throughout. In the premises, they ought to have given her instructions to proceed immediately after they had obtained copies of the Ruling on 28<sup>th</sup> February 2022. They stated that they were bereaved on 05<sup>th</sup> March 2022. As argued by Mr. Mondu, they had 4 good days to make decision to instruct their advocate to proceed with the matter if really they had the intention to do that. Even while at Makete, they could have





communicated with their advocate for her to proceed with the application.

Where matters are struck out from the court, parties are required to act promptly in taking necessary steps to pursue the matter if they wish so. See: **Yazid Kassim Mbakileki vs. CRDB (1996) Ltd. Bukoba Branch & Another**, Civil Application No. 412/04 of 2018 (CAT at Bukoba). Where they delay, the law requires the applicant for orders for extension of time to account for each day of the delay. In the premises, even if the applicants had obtained the copies of the Ruling on 28<sup>th</sup> February 2022, they were obliged to account for the days they delayed filing the application at hand whereby they even failed to communicate with their advocate to instruct her to proceed. See: **Dar es Salaam City Council v. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (CAT at DSM, unreported); **Moto Matiko Mabanga v. Ophir Energy PLC & 2 Others**, Civil Application No. 463/01 of 2017 (CAT at DSM, unreported); and that of **Finca (T) Limited & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT at DSM, unreported).

All in all, the application is found to be devoid of merit for failure to advance sufficient cause for the delay. It is therefore dismissed with costs.

Dated at Mbeya on this 01<sup>st</sup> day of September 2022.



  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 01<sup>st</sup> day of September 2022 in the presence of the applicants and Mr. Baraka Mbwilo, counsel for the respondent.

  
**L. M. MONGELLA**  
**JUDGE**