

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISCELLANEOUS LAND APPLICATION NO. 02 OF 2020

(Arising from High Court Land Appeal No. 33 of 2012)

JOHA SALUMAPPLICANT

VERSUS

HABI SAIDRESPONDENT

RULING

Date 01/03/2022& 18/03/2022

BAHATI SALEMA, J.:

On 30 January, 2020, the applicant herein, named **Joha Salum** approached this court seeking an order for an extension of time to lodge notice of appeal and memorandum of appeal to the Court of Appeal of Tanzania and any order this court may deem fit and just to grant in the circumstances of this application. The application comes under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] and is supported by an affidavit sworn by the applicant.

Before embarking into this application, I find it appropriate to narrate a brief history of matters that transpired. The applicant's prayers; it is that, the applicant, Joha Salum, lost an appeal against the respondent, Habi Salum in a judgment delivered on 01/09/2014. Dissatisfied, on 15/09/2014 she promptly lodged with this court a notice of intention to appeal.

That, from 15/09/2014 when notice of appeal was lodged, the appellant never lodged an appeal to the Court of Appeal until 04/07/2017 when the respondent lodged an application in the Court of Appeal seeking an order to strike out the notice of appeal lodged by the applicant. Upon hearing of the application inter parties the Court of Appeal struck the notice in a ruling delivered.

Now, the applicant has approached this court for the second time, praying for two things, one being an extension of time to lodge another notice of appeal and two extensions of time to lodge a memorandum of appeal to the Court of Appeal of Tanzania.

Section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019], upon which this application is founded empowers the High Court to extend the time to lodge a notice of appeal notwithstanding that the time for giving the notice has already expired.

Before going to the averments deposed by the applicant in the affidavit, I am of the view that the second limb of the first applicant's prayer, which is on the extension of time to lodge a memorandum of appeal to the Court of Appeal of Tanzania is untenable because the case from which the applicant intends to appeal originated from the District Land and Housing Tribunal, and for that reason, the applicant ought to have applied for leave to appeal to the Court of Appeal before lodging an application for extension of time to appeal. For that reason, I won't discuss that prayer since it was brought to this court prematurely.

When the application was called up for hearing, the applicant appeared in person unrepresented, whereas the respondent was represented by Mr. Kelvin Kayaga, learned counsel. The applicant had no word to add; rather, she prayed to the court to adopt her affidavit as part of her submission. Meanwhile, Mr. Kayaga prayed to the court to adopt the counter affidavit and prayed further that the applicant should not be given more time because she is bringing confusion.

In support of the applicant's averments on the first limb of the first prayer, she avers that being a layperson, she didn't know the step she was supposed to take next to further her appeal before the court of appeal and that a lawyer who had been helping her declined to help

her, so she stayed helpless. Consequently, her notice of intention to appeal was struck out by the Court of Appeal.

Furthermore, there is a point of law involved in the decision sought to be appealed against, and there is an overwhelming chance of success. That the High Court overlooked the import and validity of the “will” appointing the respondent to be an administrator and hear of the estate of the late Zena Binti Ally.

On the counter, the respondent averred that there is no proof that the applicant applied for any legal aid from organizations (governmental or non-governmental) providing legal aid and that ignorance is not a valid excuse.

He averred further that the applicant is trying to mislead this court as the validity of the “will” of the said Zena Ally was not a subject of discussion in the said Land Appeal No. 33/2012.

Having gone through the affidavit and counter affidavit submitted by the parties, I am of the considered view that, the applicant being of old age, it has been difficult for her to abide by the necessary procedure of the courts to further her appeal. It is on record that the applicant was once served by a lawyer, but there is no clue as to why and how the lawyer dropped her.

The record also shows that the applicant once appeared before the Court of Appeal in person (unrepresented) and insisted to the court that she had lodged an appeal, but the court found out that no appeal was ever lodged to it nor an affidavit to counter the application that was before it.

It is my considered view that, since the applicant had been in court corridors trying to further her appeal, but due to a lack of knowledge in matters of procedure, she failed to file the necessary documents that would help further her appeal.

With the above observation and in the interest of justice, I grant the first limb of the application for an extension of time to lodge a notice of appeal with an order that the applicant may file a notice of intention to appeal to this court within thirty days from the date of this order.

Order accordingly.



A handwritten signature in blue ink, appearing to read "Bahati Salema".

A BAHATI SALEMA

JUDGE

18/03/2022

Ruling delivered under my hand and Seal of the court in Chamber this 18th day March, 2022 in the presence of the applicant only.

Bahati

A. BAHATI SALEMA

JUDGE

18/03/2022

Right to appeal is fully explained.



Bahati

A. BAHATI SALEMA

JUDGE

18/03/2022