

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 272 OF 2023

(Originating from Misc. Civil Application No. 620 of 2018)

BETWEEN

DUNSTAN FRED MWANGOTA..... 1ST APPLICANT

**DASTAN FRED MWANGOTA (the administrator of the estate of the
late SUMA FRED MWANGOTA)..... 2ND APPLICANT**

VERSUS

NELUSIGWE ABDON MWANGOTA RESPONDENT

Date of last order: 04/10/2023

Date of ruling: 06/10/2023

RULING

A.A. MBAGWA, J.

This is an application for extension of time within which to file an application for leave to appeal against the ruling of this Court (Hon. Kulita J) dated 21st February, 2022. The applicants have brought this application



by way of chamber summons under section 11 (1) of the Appellate Jurisdiction Act praying for the following orders;

- (a) That this Court be pleased to extend time within which to apply for leave to appeal to the Court of Appeal against the decision of this Court (Kulita J) in Misc. Civil Application No. 620 of 2018 dated 21/02/2022.
- (b) Costs of the application be provided for by the respondent.
- (c) Any other relief (s) which this Court may deem fit and just to grant.

The application is supported by a sworn affidavit of Dunstan Fred Mwangota. Upon service, the respondent resisted the application through a counter affidavit sworn by Mr. Novatus Michael Muhangwa, the respondent's learned counsel.

The facts of the matter as gleaned from the depositions may briefly be stated as follows;

The applicants were dissatisfied with the decision/ruling of this Court (Kulita J) dated 21st February, 2022 in Misc. Civil Application No. 620 of 2018. As such, on 4th March, 2022, the applicant filed a notice of appeal



(part of annexure A to the applicant's affidavit). Besides, the applicants wrote a letter dated 4th March, 2022 requesting for certified copies of ruling, order and proceedings. However, the requested documents were furnished to the applicants on 5th May, 2022.

Since from 21st February, 2022 when the ruling was delivered up to 5th May, 2022 when the relevant documents were supplied to the applicants the period of thirty (30) days for applying leave to appeal had expired, the applicants, on 18th May, 2022, filed an application for extension of time via Misc. Civil Application No. 207 of 2022. Nonetheless, in the course of prosecuting Misc. Civil Application No. 207 of 2022, the applicants' counsel learned that by the time it was instituted, one of the applicants namely, Suma Fred Mwangota had died. Following this ailment, through the court order dated 5th May, 2023, the applicants' counsel successfully prayed to withdraw the application with leave to refile it. The intention of withdrawing the application was to allow completion of the appointment of the administrator of the estate of late Suma Fred Mwangota.

Consequently, upon appointment of the administrator of the estate of late Suma Fred Mwangota on 19th May, 2023, the applicants, on 6th June, 2023 filed the present application.



The applicants contend that the decision intended to be impugned is marred with illegalities in the following aspects;

- (i) That the Court ordered one Augustine Mwangota to surrender Certificate of Title No. 23954 while he was not a party to that case
- (ii) That the Court overturned its earlier decisions (Ihema J as he then was) dated 6/6/2001 and 5/10/2001.
- (iii) That the Court unjustifiably held that the applicants had interest in the property on Plot No. 2 at Kawe under Certificate of Title No. 23954.

On the adversary, the respondent contested the application stating that the applicants have no sufficient grounds to warrant extension of time. The deponent vehemently stated that the applicants failed to account for the period of delay from 5th May, 2022 when they were supplied with order, ruling and proceedings to 18th May, 2022 when they filed Misc. Civil Application No. 207 of 2022. The respondent further lamented that the applicants failed to account for delay from 25th day of May, 2023 when they obtained a letter of administration of the estate of late Suma Fred Mwangota to 6th June, 2023 when they refiled the present application.



When the matter was called on for hearing, Mr. Francis Mgare, learned advocate appeared on behalf of the applicants whilst the respondent was represented by Mr. Novatus Michael Muhangwa, learned advocate.

Submitting in support of the application, Mr. Mgare told the Court that after delivery of the decision sought to be impugned, the applicants applied for copies of proceedings and ruling on 04/03/2022 but the Court could not furnish them with the copies until 05/05/2022. He continued that at that juncture, the time for filing application for leave had expired and the applicants could not file the application without relevant documents in terms of rule 49 of the Court of Appeal Rules, 2009. He submitted that the period from when Misc. Civil Application No. 207 of 2022 was filed up to when the application at hand was instituted is taken as technical delay because the applicants have been in court in a bid to pursue the intended appeal. To fathom his submission, the learned counsel referred to the case of **Fortunatus Masha vs Willian Shija and Another 1997 (TLR) 154** in which technical delay was considered a sufficient ground.

Further, the learned counsel had it that there are also illegalities in the decision sought to be challenged as indicated in the applicants' affidavit.



In view of the grounds stated in the affidavit together with the submission, the applicants' counsel prayed the Court to allow the application with costs.

In reply, Mr. Novatus Muhangwa was of the strong view that there are no sufficient grounds demonstrated by the applicant to warrant extension of time in the web of the decision in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT at Arusha.

Further, Mr. Muhangwa contended that the copies of ruling and order in Misc. Civil Application No. 620 of 2018 were ready for collection since from 10th March 2022. However, upon probe by the Court, the learned counsel admitted that he had no proof to that effect apart from his verbal. In addition, the respondent's counsel submitted that applicant's letter requesting for copies of ruling and drawn order was received by the Court on 07/03/2022 that was 14 days after delivery of ruling.

Besides, the learned counsel had it that Misc. Civil Application No. 207 of 2022 was filed on 18/05/2022 whereas the applicant was supplied with the order on 05/05/2022 hence there was a span of thirteen (13) clear days



which were not accounted for. He stressed that the period of thirteen days does not form part of technical delay. Concomitantly, the learned counsel explained that the applicant was appointed administrator of the estate of the late SUMA FRED MWANGOTA on 19/05/2023 but, for no reasons, the instant application was filed on 6th June, 2023. He opined that there was a span of 12 days which had not been accounted for.

Arguing on the ground of illegality in the decision sought to be impugned, the respondent's counsel was of strong view that there is no illegality in the decision. He argued that the Court properly determined the application and moreso, the person (Augustine Mwangota) who was ordered to surrender title deed did not complain about the decision. The counsel added that illegality should not be used to shield the applicant's inaction. On this note, he relied on the decision in the case of **Mtengeti Mohamed vs Blandina Macha**, Civil Application No. 344/17 of 2022, CAT at Dar es Salaam at page 9.

In fine, respondent's counsel prayed for dismissal of application for want of merits. He also pressed for costs.



In rejoinder, Mr. Mgare replied that the respondent did not produce any proof to substantiate his contentions that the ruling and order was ready for collection as of 10/03/2022. The applicants' counsel also clarified that the period from 05/05/2022 up to 18/05/2022 was accounted for under paragraph 7 of the applicants' affidavit.

Having canvassed the rival submissions and upon appraisal of the depositions made by the parties, the pertinent issue for determination is whether the applicant has demonstrated sufficient cause to warrant extension of time.

It is common cause that grant of extension of time is exclusively discretion of the Court. See also the case of **Yusuf Same and Another vs Hadija Yusufu**, Civil Appeal No. 1 of 2002, CAT at Dar es Salaam. However, in exercising this discretion, the court is guided by one factor namely, whether there are sufficient grounds.

It is a settled law that there is no fast and hard rule as to what amounts to good cause rather, good cause is determined upon consideration of the obtaining circumstances in a particular case. See **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Co. Ltd**, Civil Application No. 96



of 2007, CAT at Dar Es Salaam. Further, in the case of **Laurent Simon Assenga vs Joseph Magoso and Two Others**, Civil Application No. 20 of 2016, CAT at Dar es Salaam, the Court, at page 3, had the following to say;

'In determining an application under Rule 10, the issue that has to be resolved is always, whether, the applicant has shown good cause for extension of time. What is a good cause is a question of fact, depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case'

As such, through case laws, courts have prescribed various considerations which may be taken into account for establishing sufficient cause. The factors include length of delay involved, reasons for delay, the degree of prejudice, if any, that each party is likely to suffer, diligence of a party, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam, **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam and



A. Aminda

Ludger Bernard Nyoni vs. National Housing Corporation, Civil Application No. 372 of 2018, CAT at Dar Es Salaam.

I have gone through the applicants' affidavit along with the annexures. It is clear that on 4th day of March, 2022 the applicants lodged a notice of appeal (annexure A to the applicants' affidavit) and simultaneously wrote a letter to request copies of ruling, proceedings and drawn order. Upon being furnished with the relevant documents, the applicants filed an application for extension of time i.e., Misc. Civil Application No. 207 of 2022 which was later i.e., 5th May, 2023 withdrawn with leave to refile. This series of events exhibits the applicants' intention to challenge the decision from the very outset.

Further, as hinted above, one of the factors which is taken in to account in the deliberation to grant extension of time is the degree of prejudice which each party is likely to suffer while mindful of the constitutional right of appeal. On assessing the respondent's counter affidavit, I do not see high degree of prejudice which the respondent is likely to suffer in the event this application is granted.

A handwritten signature in black ink, appearing to be 'A. M. M. M.', with a horizontal line underneath it.

Having employed the established principles vis a vis the contents of the parties' depositions, I am inclined to hold that the applicants have demonstrated sufficient grounds for this Court to grant the extension. That said and done, I allow the application and the applicants are given fourteen days (14) from the date of this ruling to file the application for leave to appeal. Each party should bear its own costs.

It is so ordered

The right of appeal is explained.

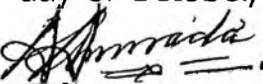



A.A. Mbagwa

JUDGE

06/10/2023

Court: This ruling has been delivered in the presence of Mr. Dunstan Fred Mwangota, the applicant and Mr. Novatus Michael Muhangwa, learned counsel for the respondent this 6th day of October, 2023.


A.A. Mbagwa

JUDGE

06/10/2023

