

**IN THE COURT OF APPEAL OF TANZANIA  
AT ZANZIBAR**

**CIVIL APPLICATION NO. 155/15 OF 2021**

**SALUM ABDALLA MAKAWA ..... APPLICANT**

**VERSUS**

**WANU AME ..... RESPONDENT**

**(Application from the Ruling of the High Court of Zanzibar at Vuga)**

**(Mahmoud, J.)**

**dated the 8<sup>th</sup> day of July, 2020**

**in**

**Civil Application No. 68 of 2019**

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**R U L I N G**

22<sup>nd</sup> April & 2<sup>nd</sup> May, 2024

**MLACHA, J.A.:**

By notice of motion made under rules 10 and 45 A (1) (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the applicant, Salum Abdalla Makawa, is seeking, by way of a second bite, an order for extension of time within which to lodge an appeal to this Court out of time. His earlier application to the High Court made in High Court Civil Application No. 68 of 2019 could not be successful. The application is supported by an affidavit sworn by the applicant.

The respondent, Wanu Ame, did not file any affidavit in reply.

To understand the matter properly, the facts of the case are stated briefly as follows: The applicant lost a land matter in the Land Tribunal, Land Dispute No. 95 of 2009 which was decided in favour of the respondent. Aggrieved by the decision, he moved to the High Court of Zanzibar and lodged Civil Appeal No. 5 of 2018. The appeal was dismissed. Still undaunted, he lodged a notice of appeal to this Court followed by a letter praying to be supplied with copies of the High Court proceedings, judgment and decree. At the moment when he was supplied with the proceedings, judgment and decree, he was already late. He filed Civil Application No. 68 of 2019 seeking extension of time within which to lodge the appeal. This application was struck out on 8/7/2020. He is now before this Court as a second bite.

The grounds upon which this application is based are in the notice of motion and paragraphs 2, 3 and 4 of the affidavit supporting the application. They can be put as follows:

1. That, the applicant lodged a notice of appeal and a letter requesting for copies of the proceedings, judgment and decree of the High Court in time.

2. That, the applicant lodged High Court Civil Application No. 68 of 2019 seeking extension of time without success.
3. That, the applicant has a great chance of success in the appeal, notice of which has already been lodged in the Court.

The parties appeared in person and made oral submissions for and against the application.

It was the submission of the applicant that he was aggrieved by the decision of the High Court of Zanzibar in Civil Appeal No. 8 of 2019 and lodged a notice of appeal. He then approached the Registry to get a copy of the judgment which could not be obtained until after a lapse of 3 weeks. He prepared the record of appeal and presented it for filing. The Registry Clerk (Hamza) did not treat him well. He returned the record three times demanding corrections in a manner which depicts an ill motive and some conspiracy with the other side. When the record was finally ready for filing, time had already elapsed. He accused the court clerk for being the cause of the delay.

In reply, the respondent submitted that the applicant should not be given a chance to go ahead for there is already a lapse of 5 years and the property has already been distributed to heirs. He accused the applicant

as being a trouble maker for raising this issue at a point when execution has already been done and rights given to heirs.

In rejoinder, the applicant insisted that the delay was caused by the Court Clerk not him and argued the Court to grant the application.

An application of this nature can be granted under rule 10 of the Rules upon establishing good cause. In practice one has to make an account for each day of delay. See **CRBD Bank PLC v. Victoria General Supply Co. LTD**, Civil Application No. 319/08 of 2019 [2019] TZCA 457: [3<sup>rd</sup> December 2019: TanzLII] where it was stressed that 'a delay even for a single day must be accounted for. It can also be granted where there is an illegality in the decision of the lower court as we said in the case of the **Principal Secretary, Ministry of Defence and National Service v. Davram Valambya [1999]** TLR 182. The application before me is premised on the former principle.

The applicant is trying to convince me that time was lost in the course of making a follow up to of the copy of the judgment of the High Court at the Registry. This cost him three weeks. More time was lost during his encounter with the court clerk who demanded a lot of corrections, taking him back three times. The issue now is whether this

account is sufficient to establish good cause within the meaning of rule 10 of the Rules.

The decision of the High Court was made on 6/11/2019, and this application was filed on 21/9/2020. There is a gap of 10 months and 15 days for which the applicant must account for. The applicant talks of spending three weeks to obtain a copy of the decision. He also talks of being delayed by the court clerk in a period which could not be specified. He did not file any affidavit from the Registry to support what he was saying. I think there was a need fixing event with time. There was also need of bringing evidence from some other person to corroborate his story. Again, there is no account for the delay of 43 days which followed. Failure to make a clear account is fatal.

The applicant spoke of great chances of success. Apart from the fact that this is not a ground upon which extension of time can be based, but the applicant did not lead any facts to show that the judgment of the High Court is problematic to the extent that there is a certain victory on his side. He just made an empty statement which cannot assist him.

Taking into account the length of time, and what have been demonstrated above, I see no base upon which time can be extended. The application is found to be devoid of merits and dismissed with costs.

It is ordered so.

**DATED** at **ZANZIBAR** this 30<sup>th</sup> day of April, 2024.

L. M. MLACHA  
**JUSTICE OF APPEAL**

The Ruling delivered this 2<sup>nd</sup> day of May, 2024 in the presence of the Mr. Salum Abdallah Makawa the applicant and M/S Wanu Ame Hassan the Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**