

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

CIVIL APPLICATION No. 312/12 OF 2020

NADA PANGA APPLICANT

Versus

ASHA SEIF 1ST RESPONDENT

HEMED HUSSEIN 2ND RESPONDENT

AMIRI HAMZA..... 3RD RESPONDENT

**(Application for extension of time to appeal against the decision of the
High Court of Tanzania (Land Division) at Tanga)**

(Mzuna, J.)

Dated the 30th day September, 2011

in

Land Appeal No. 06 of 2010.

RULING

8th & 10th June, 2021

KOROSSO J.A

Nada Panga, the applicant lodged an application for enlargement of time within which to file an appeal against the decision of the High Court of Tanzania (Land Division) at Tanga in Land Appeal No. 06 of 2010 delivered on 30th September 2011. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (hereinafter referred to as the Rules). It is supported by an affidavit duly sworn by the applicant.

Asha Seif, Hemed Hussein and Amiri Hamza, the 1st, 2nd and 3rd respondents respectively, did not file affidavit/s in reply any response in

terms of Rule 56 (1) of the Rules, despite available evidence of being duly served with the application.

Briefly, the background to the application is as follows: The respondents instituted a case at Msimba Ward Tribunal Land Dispute No. 47/2008 with complaints that the applicant encroached on their piece of land. The Ward Tribunal decided in favour of the respondents. Dissatisfied, the applicant unsuccessfully appealed to the District Land and Housing Tribunal (DLHT) in Land Appeal No. 166 of 2008. Still dissatisfied, she appealed to the High Court of Tanzania at Tanga in Land Appeal No. 6 of 2010 and the appeal was dismissed in a judgment delivered on 30/9/2011.

Aggrieved by the High Court decision, the applicant filed a notice of appeal to the Court on 10th October, 2011 and filed application for leave to appeal to the Court of Appeal and sought for the certificate on point of law which was granted by the High Court on 2/12/2013. The leave to appeal was granted after the expiry of the time limit to file an appeal to the Court hence the current application.

At the hearing of the application, the applicant was represented by Mr. Henry Njowoka. The 1st respondent did not enter appearance although the affidavit sworn by Alfred Wayala, the process server shows that she

was duly served. The 2nd and 3rd respondents each appeared in person and were unrepresented.

Mr. Njowoka, at the outset, prayed that hearing of the application should proceed in the absence of the 1st respondent under Rule 63 (2) of the Rules, since the returned notice of hearing and the supporting affidavit of the process server avers that the 1st respondent was duly served. The 2nd and 3rd respondent supported the said prayer. Upon consideration of the uncontested prayer and being satisfied that the 1st respondent was duly served, the uncontested prayer was granted in terms of Rule 63(2) of the Rules.

When accorded and opportunity amplify on the application, the learned counsel adopted the notice of motion, the affidavit in support and the written submission in support of the application. He expounded on the grounds founding the application which are averred in paragraphs 6, 7 and 8 of the affidavit as: **One**, that there was a delay in obtaining certified copies of Judgment, decree and proceedings in time. **Two**, that the advocate who represented the applicant in the lower court was of ill health for a long time and despite the applicant's follow up nothing concrete proceeded regarding the appeal. **Three**, the applicant duly filed the letter seeking for copies of proceedings, judgment and decree for the purpose

of moving the Deputy Registrar Tanga to be provided with a certificate of delay but to date, it has yet to be issued. He thus prayed that the prayers sought be granted.

The learned counsel contended further that the applicant has demonstrated good cause to warrant grant of extension of time to lodge an appeal. He also argued that since the respondents did not file an affidavit in reply to oppose the application, therefore inference be drawn that the respondents are not opposing the application.

In reply, the 2nd and 3rd respondents opposed the application. The 2nd respondent argued that, the matter has taken twelve years and there were no steps taken to timely institute an appeal on the part of the applicant. Similarly, the 3rd respondent contended that, the applicant slept on his right to appeal for a long time not showing any efforts to institute appeal and that no sufficient reasons have been advanced for extension of time to appeal to be granted. That the only thing the applicant is doing is delaying them to enjoy their rights in the disputed land.

In his rejoinder, the counsel reiterated his earlier submissions, stressing that the applicant exercised diligence and not negligence at all times in pursuit of the appeal as found in paragraphs 6 and 7 of the affidavit. He prayed the applicant be granted the prayer sought.

In the instant application the pertinent issue for determination is whether the applicant has demonstrated good cause to support the application for extension of time pursuant to Rule 10 of the Rules. The position of the law is settled. Case law has established that before the Court exercises its discretion under Rule 10 it must have sufficient material before it to account for the delay. The applicant must also show diligence in prosecuting the intended action. An application for extension of time for the doing of any act authorized by the Rules, under Rule 10 of the Rules, is an exercise in judicial discretion. (See **Mwita s/o Mhere and Ibrahim Mhere v R** (2005) TLR 107).

It is undisputed that the decision against which an intended appeal is sought to be lodged was delivered on 30/9/2011. The applicant's affidavit, particularly paragraphs 6, 7, 8 and 9 avers the cause of the delay to lodge the appeal. To a large extent the one blamed is the previous advocate, Mr. Sangawe who due to long illness that led him not to pursue the applicant's appeal within time and that no other advocate was available in the said office to take over. It is also averred that, upon his return, Mr. Sangawe told the applicant that his appeal was never filed and gave him his file back and the applicant on 23/3/2018 sought legal consultation elsewhere. Undoubtedly, also meaning that the legal

relations between the applicant and the learned counsel ended before 23/3/2018.

What amounts to good cause has yet to be defined. However, from decided cases, certain factors provide guidance on whether or not the applicant has shown good cause. Amongst the factors to be taken into account as succinctly stated by the Court in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) are: -

- “(a) The applicant must account for all the period for 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; and*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged”.*

Also, in **Oswald Masatu Mwizarubi v, Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court stated that:-

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

It is thus the duty of the Court to consider an application of this nature based on not only whether or not there is good cause for the delay, but also the reason for extending the time to take the intended action (See **Republic v. Yona Kaponda and 9 Others** [1985] TLR 84).

Having examined the arguments by the parties, notice of motion along with the supporting affidavit of the applicant, I am of the view that the applicant has failed to explain the delay to warrant me to exercise my discretion to grant the same. From the averments in the affidavit, it is clear that the applicant was fully aware that the time was counting but decided to continue to wait when the option to seek other counsel was there. At the start, the applicant showed due diligence in pursuit of the appeal. This can be discerned from the fact, that the judgment was delivered on 30/9/2011. The Notice of Appeal was filed on 10/10/2011.

Thereafter, he pursued the leave to appeal and certificate on points of law granted on 2/12/2013. The time from then is not fully explained. Paragraphs 6, 7 and 8 have failed to explain what transpired from 2013

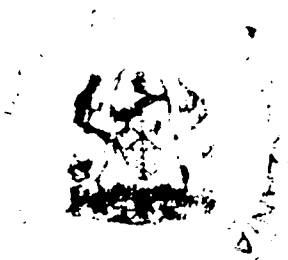
to hinder pursuit of the appeal. Paragraph 8 avers, that it was on 23/3/2018 when the applicant sought alternative legal advice. This instant application was filed on 21/10/2019 more than 18 months later.

I therefore hold that the applicant has failed to show sufficient cause for the delay to warrant me to exercise my discretion to extend time as prayed. The application is dismissed with costs. Order Accordingly.

DATED at TANGA this 10th day of June, 2021.

W. B. KOROSSO
JUSTICE OF APPEAL

The Ruling delivered this 10th day of June, 2021 in the presence of Ms. Elisie Paul, learned counsel for the applicant and in the absence of the 1st, 2nd and 3rd Respondents who are duly notified, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL