

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

**(CORAM: MWARIJA, J.A., MWANDAMBO, J.A., And MASHAKA, J.A.)**

**CIVIL APPEAL NO. 310 OF 2017**

**ILIMU SHIJA ..... APPELLANT**

**VERSUS**

**SHINGISHA MADUKWA ..... RESPONDENT**

**(Appeal from the Ruling of the High Court of Tanzania at Tabora)**

**(Rumanyika, J.)**

**dated the 27<sup>th</sup> day of September, 2017**

**in**

**(Misc. Land Application No. 75 of 2017**

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**JUDGMENT OF THE COURT**

30<sup>th</sup> March & 1<sup>st</sup> April, 2022

**MWARIJA, J.A.:**

This appeal arises from the decision of the High Court of Tanzania (Tabora District Registry) at Tabora in Misc. Land Application No. 75 of 2017 (the application). In the application, the appellant sought an order granting him extension of time to institute an appeal in the High Court against the decision of the District Land and Housing Tribunal for Nzega (the DLHT) in Land Case Appeal No. 35 of 2016 which was handed down on 18/12/2016.

The dispute between the parties which, at the level of the DLHT was decided in favour of the respondent, involved a piece of land situated at Shinginyika area within Mwashiku Ward in Nzega District. The appellant was aggrieved by the decision of the DLHT and therefore, intended to appeal to the High Court. He did not however, file his intended appeal within the prescribed period of sixty days of the date of the decision which is sought to be challenged as provided for under s. 38 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2002]. It was for that reason that he filed the application which has given rise to this appeal.

The application before the High Court was made by way of chamber summons supported by an affidavit sworn by the appellant. In paragraphs 6-11 of his affidavit, he stated the following reasons which, according to him, constituted sufficient cause for the delay:

- "6. . . . I wrote a letter to the District Land and Housing Tribunal for Nzega to supply to me true copies of the Judgment and Decree in order to enable me to appeal before this court.
7. I pursued the said copies for such a long time without [succeeding] to get [them].
8. Then I wrote a later to the DC of Nzega to seek assistance from him in order to help me

*to acquire the said copies. A letter dated 16/1/2017 is herewith attached . . . and marked JJ.1 correctively for references.*

*9. Through assistance from him on 26/1/2017 I succeeded to get the said copies to which on 6/12/2017 I lodged the Land Case Appeal No. 4/2017 before this court but the said appeal [was] dismissed for being time barred. A copy of the judgment is . . . attached herein and marked JJ.2.*

*10. There is a point of law which overridden (sic) by the lower courts to wit that:*

*i. The proceedings of the lower courts were void. The copies of the judgment of the District Land and Housing tribunal and Mwashiku village Land Council are herewith attached . . . and marked JJ.3 and JJ.4.*

*11. My process to lodge appeal in time was beyond my control and all efforts to lodge the same in time . . . so far proved futile."*

The application was resisted by the respondent through his counter affidavit filed on 4/9/2017. He disputed the contents of the paragraphs of the appellant's affidavit reproduced herein above save for paragraph 7.

Having heard the application, the learned High Court Judge (Rumanyika, J., as he then was) held the view that the same lacked merit. He found that the appellant did not assign sufficient cause for the delay in lodging the intended appeal. It was his finding that the allegations made by the appellant in his affidavit were not substantiated. With regard to the allegation in paragraph 6 for example, the learned Judge observed that, although the appellant stated that he wrote a letter to the DLHT requesting for certified copies of the judgment and decree (the copies), notwithstanding his failure to attach a copy of that letter to his affidavit, he did not substantiate when he wrote that letter, if any, and the date on which the copies were supplied to him.

With regard to the allegation by the appellant that he obtained the copies through the assistance of the office of the District Commissioner, the learned Judge did not find that, such factor constituted sufficient cause for grant of extension of time because, even if that was the case, the appellant did not account for all the days of the delay.

It was on the basis of those findings that the learned Judge dismissed the application with costs.

Dissatisfied with the decision of the High Court, the appellant preferred this appeal raising the following three grounds of appeal:

- "1. The Honourable Judge did not consider the cause of the delay which was evidenced by the letter from the office of the District Commissioner.*
- 2. The Honourable Judge erred in facts by not considering that there was a [mishandling] of the appellant file which caused the delay and the same was proved by the letter from the District Commissioner's office.*
- 3. The Honourable Judge erred in law and facts by considering the manner of complaint to the District Commissioner's office as essential in supporting the grounds for delay and not the circumstances which lead to the delay."*

At the hearing of the appeal, both parties did not enter appearance although they were served through substituted service by publication in the Mwananchi Newspaper of 4/3/2022. Since, however, the appellant had filed his written submission as required by Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules), in terms of Rule 112 (4) of the Rules, he was deemed to have appeared. In the circumstances, we were enjoined to proceed in the absence of the parties and determine the appeal on the basis of the appellant's written submission.

In his written submission, the appellant amplified his grounds of appeal. He argued that the delay in filing the appeal resulted from the delay by the DLHT to supply him with the copies. He maintained that the copies were supplied to him after having written a letter to the office of the District Commissioner and that, it was after the DLHT had received a letter from the said office, that it supplied him with the copies.

The appellant contended further that, he did not exhibit any laxity because after the decision of the DLHT, he consistently made a follow up on his request for the copies. He added that the copies were supplied on 6/1/2017 and thereafter, he filed Land Appeal No. 4 of 2017 which was dismissed on 2/8/2017 for having been filed out of time.

From the appellant's submission, the issue for our determination is whether or not the learned High Court Judge erred in deciding that the appellant did not assign sufficient cause for the delay. The law is certain that the court hearing an application for extension of time has discretion to grant or refuse such an application. For his application to succeed, the applicant must assign good cause for the delay – see for instance, the cases of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, **Nyabazere Gora v. Charles**

**Buya**, Civil Appeal No. 164 of 2016 and (all unreported). In **Lyamuya Construction company Limited** (supra), the Court stated some of the factors which constitute good cause. They are that:-

*" (a) The applicant must account for all days of the 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.*

*(d) if the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In the case at hand, the learned High Court Judge found that the appellant had not accounted for all the days of the delay so as to be granted extension of time to institute his appeal. Having gone through his affidavit and his written submission, we were unable to find any sound reason to fault that finding. The appellant could not substantiate the allegations made in his affidavit. He admitted in his written submission

that he did not have evidence that he wrote a letter requesting for the copies. He states as follows at pages 3 - 4 of his written submission:

*". . . though no letter requesting those copies, but the same was substantiated by the fact that he complained to the District Office which in response wrote a letter to the Tribunal . . . ."*

The fact that the appellant wrote a letter to the office of the District Commissioner is not a proof that the letter requesting for the copies was written to the DLHT. Most important however, as observed by the learned Judge is the unsubstantiated allegation regarding the date on which the letter, if any, was lodged in the DLHT, for the period of the delay to be computed. On the allegation that the decision sought to be challenged is tainted with illegalities, that contention is in our view, devoid of merit. For the allegation of illegality to constitute good cause, the illegality must be apparent on the face of the record. – see for example our recent decision in the case of **Yege s/o Gawe v. Republic**, Criminal Appeal No. 45 of 2019 (unreported). In that case, after having considered a number of authorities on that position of the law, we observed as follows:

*". . . for an illegality to be sufficient to warrant extending time, it must not only be apparent but also of sufficient public importance . . . not any*



*claimed illegality will warrant the Court's exercise of its discretion if it does not meet the threshold."*

Apart from alleging that the decision sought to be challenged contains illegalities, the appellant did not point out the nature of such illegalities.

On the basis of the above stated reasons, we could not find any sufficient ground upon which we could interfere with the exercise by the learned Judge of his discretion. In the event we hereby dismiss the appeal. Since the parties did not appear, we make no order as costs.

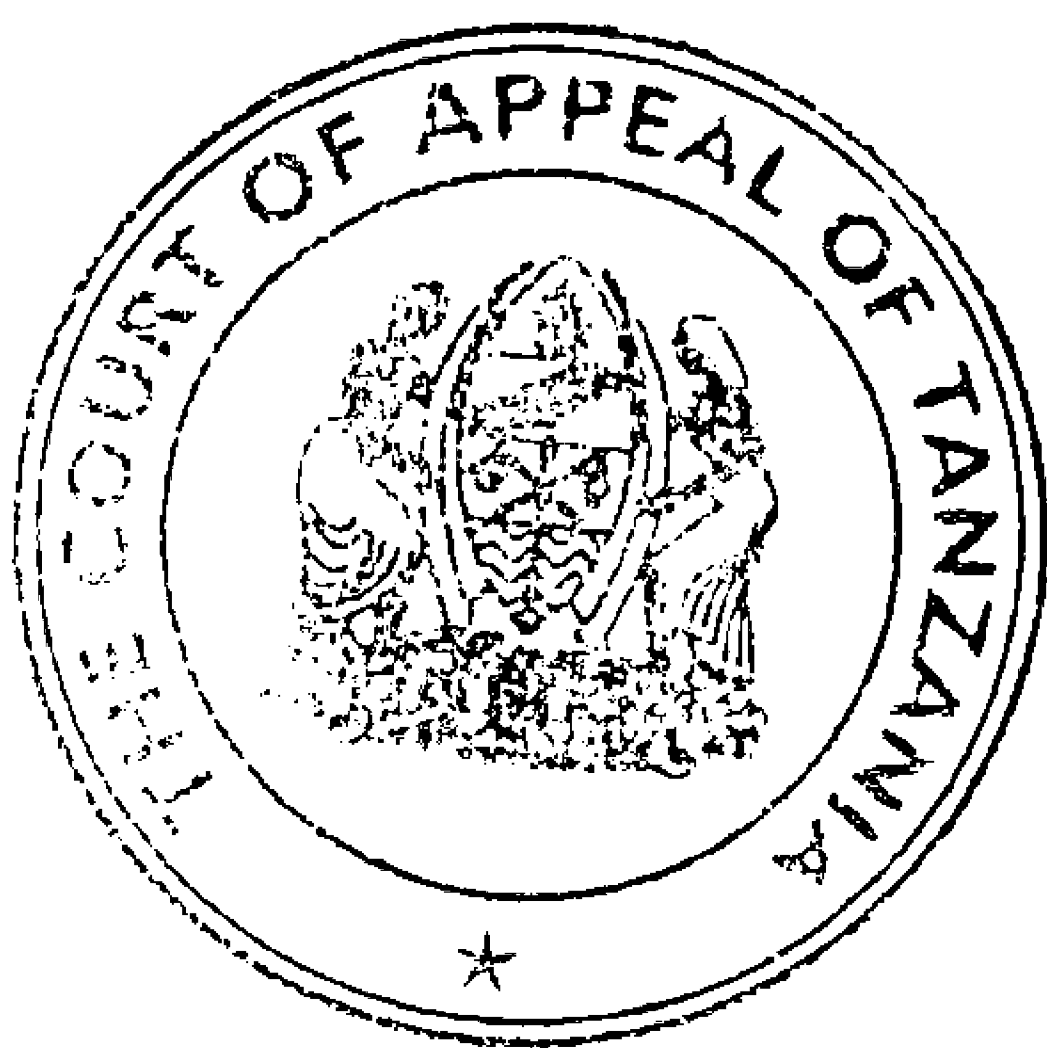
**DATED** at **TABORA** this 1<sup>st</sup> day of April, 2022.


A. G. MWARIJA  
**JUSTICE OF APPEAL**

L. J. S. MWANDAMBO  
**JUSTICE OF APPEAL**

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 1<sup>st</sup> day of April, 2022 in the absence of both parties is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**