

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

CIVIL APPLICATION NO. 61/11 OF 2021

JOHA LUKWAILA APPELLANT

VERSUS

NASIB DAIDI RESPONDENT

**[Application for Extension of time to appeal to Court against
The judgment of the High Court of Tanzania at Tabora]**

(Mallaba, J.)

dated the 25th day of October, 2016

in

Land Case Appeal No. 22 of 2016

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RULING

22nd September, & 2nd October, 2023

KAIRO, J.A.:

The applicant, Joha Lukwaila has filed this application seeking orders for extension of time to lodge an appeal to the Court out of time in order to challenge the decision of the Court dated 25th October, 2016. The application is preferred under rules 10, 4 (1), (2) (a) and (b) of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit of Method Raymond Gabriel Kabuguzi who was the advocate representing the applicant by then.

Briefly, the background of this application as can be discerned from the affidavit is that, the parties had a land dispute which was referred to the Ward Tribunal and the District Land and Housing Tribunal (the DLHT) respectively. Both tribunals decided in favour of the applicant. The respondent was aggrieved and decided to appeal to the High Court which reversed the decision on 25th October, 2016.

Unhappy with the High Court decision, the applicant on 26th October, 2016 lodged the notice of appeal and requested for the copies of the proceedings, judgment, decree, exhibits as well as other necessary documents filed in the High Court for appeal purpose. As per requirement, the application for certification on point of law was made and granted.

It was further deponed in the affidavit that on 31st December, 2019 the applicant was supplied with some of the requested documents accompanied by the certificate of delay exempting days up to 31st December, 2019. However, some of the requested documents including certified copies of the proceedings of the DLHT in Land Appeal No. 27 of 2014 together with the written opinion of assessors and exhibits on record were not given to the applicant despite several requests by the applicant. That an attempt to request from the Registrar for amendment of the certificate of delay which according to the applicant was issued pre-

maturely, proved futile as the Registrar on 21st February, 2020 informed the applicant that the requested documents did not form part of the record in Land Appeal No. 22 of 2016. The applicant thus opted to lodge this application.

At the hearing, the applicant appeared in person, unrepresented while the respondent was represented by Mr. Saikon Justin Nokoren, learned counsel.

When invited to amplify her application, the applicant adopted the notice of motion and the supporting affidavit without more. She prayed the Court to consider and grant her application.

In his response, Mr. Nokoren prayed to adopt the affidavit in reply affirmed by Musa Kassim, a former advocate who represented the respondent. From the outset the learned counsel opposed the application arguing that there is no good cause advanced by the applicant to make the Court exercises its discretion and grant the extension of time sought.

Amplifying, Mr. Nokoren submitted that all of the relevant documents together with the certificate of delay exempting the days up to 31st December, 2019 certified by the Registrar to have been used in preparing the relevant documents for appeal purpose, were given to the applicant on 31st December, 2019. As such the applicant was required by

law to lodge the appeal within 60 days from 31st December, 2019. He went on to submit that, the 60 days within which to file the appeal lapsed on 1st March, 2020. Instead, the applicant decided to file this application on 20th March, 2020. He argued that the applicant in the circumstances decided to slip on her own rights. Mr. Nokoren substantiated his argument with the case of **Mtengeti Mohamed vs. Blandina Macha**, Civil Application No. 344/11 of 2020 (unreported).

The learned counsel went on to argue that after the lapse of 60 days within which to appeal, the applicant failed to account for the delay from 2nd March, 2020 until when she lodged this application on 20th March, 2020.

Responding to the argument that some of the documents which were to be included on the record of appeal were yet to be supplied to her, Mr. Nokoren responded that according to the letter from the Registrar dated 21st February, 2020, the documents the applicant required were not part of the proceeding in Land Case No. 22 of 2016 that is intended to be appealed against. But further to that, under rule 96 (6) of the Rules, the applicant could still have lodged the appeal without them and later include the missing documents on the record of appeal within 14 days from the lodging date. However, the applicant failed to act diligently and thus fails

short of the factors considered when determining good cause to warrant the grant of extension of time. He referred the Court to the case of **Shoprite Checkers Tanzania Limited vs. Commissioner General of Tanzania Revenue Authority**, Civil Application No. 358/20 of 2021 (unreported) to back up his argument.

The learned counsel went on to submit that the applicant has also deponed that, she was yet to be supplied with the requested documents which according to her are necessary to be included in the intended record of appeal. It was the contention of Mr. Nokoren that, the extension of time in the circumstances, even if granted, will be an exercise in futility as the applicant will not be able to lodge the intended appeal without having to institute another application to extend time.

According to him, this is not allowed and the Court in **Robert Kadaso Mageni vs. Republic**, Criminal Appeal No. 476 of 2023 (unreported) has cautioned the grant of extension of time which turns out to be a futile exercise. He further argued that, allowing that to happen is to contravene the principle that advocates for an end to litigation. He concluded by praying the Court to dismiss the application, with costs.

The applicant had nothing as a rejoinder. She decided to put trust in the Court to do justice as the circumstance dictates.

In determining whether or not this application is meritorious, I will start by examining the provision upon which the applicant can move the Court to grant the extension of time. That is rule 10 of the Rules which also this application is predicated on. It reads as follows: -

"The Court may, upon good cause shown extend the time limited by these Rules or by any decision of the Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

As to what exactly constitutes "good cause" has been left to the discretion of the Court. Essentially, there is no hard and fast rule in establishing it. Nevertheless, the case of **Lyamuya Construction Company vs. Board of Registered Trustee of Young Women Christian Associated of Tanzania**, Civil Application No. 2 of 2010 (unreported) has laid down some factors to be considered when determining "good cause". These are as follow: -

- "(a) The applicant must account for all the period of delay,*
- (b) The delay should not be inordinate;*

(c) The applicant must show diligence, and not a 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 see **Richard Moses vs. Republic**, Criminal Application No 1 "B" of 2015 and **Zahara Kitindi and Another vs. Juma Swalehe & Nine Others**, Civil Application no 4/05 of 2017 (both unreported).

I have gone through this application. To say the least, none of the above factors were exhibited by the applicant to demonstrate good cause for delay to make this Court exercises its discretion to extend the time sought.

It is on record that, the applicant was on 31st December, 2019 supplied with all of the relevant documents together with the certificate of delay in respect High Court Land Appeal No. 22 of 2016 for appeal purpose. As rightly submitted by Mr. Nokoren that the 60 days within which to lodge the appeal lapsed on 1st March, 2020, which means the time started to run against the applicant on 2nd March, 2020. According to calculation, 18 days had already lapsed when the applicant filed this

application. However, the applicant did not account for the days lapsed. Legally she was required to account for each day of delay to convince the Court that he was not negligent or sloppy in pursuing her right. We have persistently stated that legal stance in our various decisions. For instance, in **Tanzania Coffee Board vs. Rombo Milles Ltd**, Civil Application No 13 of 2015, and in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee and 3 Others**, Civil Application No. 130/01 of 2020 (both unreported), to mention but a few.

I am aware that the applicant has stated that she was not supplied with some of the documents which according to her, were necessary to be included on the record of appeal. But the letter by the Registrar to the applicant stated categorically that the requested documents were in respect of Land Appeal Case No. 12 of 2017 which was irrelevant as it was not part of the record of the Land Appeal No. 22 of 2016 which the applicant intends to challenge on appeal. As such, associating the alleged failure to get the said documents with the inability to file the intended appeal is a misconception.

But further, if the documents are necessary for the lodging of the intended appeal as the applicant alleges, then the grant of extension of time to appeal in this application would be a futile exercise since she will

not be able to lodge the same as rightly argued by Mr. Nokoren. In fact, in the circumstance, the application was prematurely filed without first getting the said documents.

In conclusion, the applicant has failed to demonstrate any good cause for delay that would have entitled her the extension of time to appeal out of time. This application therefore fails and is accordingly dismissed with costs.

DATED at Tabora this 30th day of September, 2023.

L. G. KAIRO
JUSTICE OF APPEAL

Ruling delivered this 2nd day of October, 2023 in the presence of the Applicant in person and Mr. Saikon Justin Nokoren, learned counsel for the Respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL