

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

CIVIL APPLICATION NO. 499/06 OF 2021

NTUTA WAILES.....APPLICANT

VERSUS

JAMES ELIAS NZUNDA.....1ST RESPONDENT

ELINA JAMES MTELA.....2ND RESPONDENT

CHRISTA ELIAS NZUNDA.....3RD RESPONDENT

YONA YASAMBI.....4TH RESPONDENT

**(An Application for extension of time to appeal out of time against the
ruling of the High Court of Tanzania at Mbeya)**

(Mongella, J.)

Dated the 21st day of May, 2021

in

Reference No. 7 of 2020

RULING

22nd & 24th February, 2023

KITUSI, J.A.:

This is an application for extension of time to appeal against the decision of the High Court in Land Reference No. 7 of 2020 dated 21/5/2021. The Applicant lodged his notice of appeal on 25/5/2021 and served it to the respondents on 1/6/2021 but did not file his appeal on time, thus asking for an extension. The present application was filed on 17/8/2021, 88 days from the date the notice of appeal was lodged, and

21 days from when the 60 days, prescribed for filing an appeal under rule 90(1) of the Court of Appeal Rules, 2009 (the Rules) had elapsed.

This application originates from Bill of Costs No. 245 of 2018 of the District Land and Housing Tribunal for Mbeya, awarding the respondents Tshs 472,000/= a decision which the Applicant is dissatisfied with. On 19/11/2020 the High Court, in Misc. Land Application No. 74 of 2020, granted him 14 days extension of time within which to file a reference out of time against that taxation. The Applicant filed Reference No. 7 of 2020 which was dismissed for being filed out of time. He believes that the High Court erred in dismissing the reference since, he maintained, the delay was caused by network problems making it impossible for him to pay the requisite filing fees, thus he had good cause for his delay. He is now intending to ask the Court to vary that decision upon this application for extension of time being granted.

It is in the Applicant's affidavit that, he filed Land Reference No. 7 of 2020 on 1/12/2020, and on the following day, 2/12/2020, he was informed that the documents were endorsed and ready for payment of fees. Unfortunately, due to network failure he could not obtain a control number for him to make immediate payments. He thus made the

payments on 8/12/2020, when the 14 days to file his reference had elapsed. It is known that the documents are taken to have been filed in court on the date of payments, for that reason, the High Court dismissed the reference for being filed out of the 14 days he was given in Misc. Land Application No. 74 of 2020. The Applicant maintains that he is not to be blamed since he paid the fees immediately after the network problem had been resolved.

As to why he delayed filing the intended appeal to the Court, the appellant stated in paragraph 10 of his supporting affidavit that it is due to lack of diligence and him being a layman. He stated that instead of taking the right step, he proceeded to lodge a similar application in the High Court. On 21/6/2021 when he was about to pay fees for the above-said similar application, he became aware that he was about to take a wrong route, hence he decided to bring this application.

At the hearing, the Applicant appeared in person without legal representation, likewise for the 1st, 2nd, and 3rd respondents, but the 4th Respondent did not enter appearance though there was proof of service on him. Therefore, the hearing proceeded in his absence.

In support of his application, the Applicant reiterated the reasons for his delay in filing Land Reference No. 7 of 2020 before the High Court. He also added that he left his money for paying the registration fees to one Charles Mapunda, a court clerk, who paid the fees on 8/12/2020, out of time. However, it is clear to me that those arguments may be relevant in addressing the intended appeal if time is extended, not in explaining why having lodged a notice of appeal on 25/5/2021, the appellant did not institute the intended appeal within the 60 days prescribed by the law.

The Respondents who did not file any affidavits in reply, resisted the application, the first respondent arguing that the Applicant ought to have filed an affidavit of the Court Clerk to support his contention. He also pointed out that, ignorance of the law is not an excuse. The 2nd and 3rd Respondents had nothing to add but associated themselves with the submissions of the 1st Respondent.

In a rejoinder, the applicant stated that he lodged his notice of appeal and served it on the respondents on 1/6/2021, but could not file the appeal in time since there was another case pending at the High Court.

Before proceeding further, it is relevant to note that the notice of motion is made under rule 45A (1)(b) of the Rules. The provision does

not provide for an extension of time to appeal to the Court. The notice of motion is also made under section 14(1) of the Law of Limitation Act, which is not applicable in the Court of Appeal. The application was supposed to be made under rule 10 of the Rules. However, this defect is curable under the proviso to rule 48(1) of the Rules, therefore, the application will be determined on merits since what is prayed for is within the jurisdiction of the Court.

It is well settled that granting an extension of time is in the discretion of the Court and it is exercised only when good and sufficient cause is given. In **A-One Products & Brothers vs Abdallah Almas & Others (Civil Application 586 of 2017)** (unreported) the Court restated this position by quoting what was stated in **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No.12 of 2002 (unreported) that;

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

Save for what is provided in paragraph 10 of the applicant's affidavit and the applicant's rejoinder, the rest do not explain why the applicant delayed filing the intended appeal to this Court against the ruling in Land Reference No. 7 of 2020. The other contentions aim at showing why the applicant delayed in filing Land Reference No. 7 of 2020 within the 14 days he was granted in Misc. Land Application No. 74 of 2020. As intimated above, that is hardly relevant in accounting for the delay in filing the intended appeal to the Court.

It is in the record that the notice of appeal against the decision in Land Reference No. 7 of 2021 was filed on 25/5/2021, 4 days after the reference was dismissed on 21/5/2021. In line with rule 90(1) of the Rules, the appeal ought to have been filed within 60 days from when the notice was lodged in Court, which would have been latest by 25/7/2021. This application was filed on 17/8/2021, almost 21 days after the lapse of the 60 days from when the notice was lodged. Therefore, the applicant ought to have accounted for these 21 days.

The applicant alleges ignorance of law and lack of diligence on his part for not filing the intended appeal in this Court, instead he filed an application for an extension of time before the High Court on 21/6/2021, before realizing he had taken a wrong course. That contention is neither

here nor there because, on 21/6/2021 when he realized he was in the wrong truck, the 60 days for filing his appeal were yet to elapse. He had still almost 29 days left to fulfil his intention.

The applicant has failed to show good cause in line with our decisions including, **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 and in **Anche Mwedu Ltd & 2 Others vs Tresury Registrar (Successor of Consolidated Holdings Corporation)**, Civil Reference No.3 Of 2015 (both unreported) to mention a few. The Applicant has not accounted for each day of the delay from the date the 60 days elapsed to the date of filing this application. The contention that he was busy pursuing a wrong course because of his ignorance in law, is inconsistent with his swift lodging of the notice of appeal only 4 days after the decision intended to be challenged was delivered. It is common logic that as he lodged the notice of appeal in time and served it in time, he knew the next step. His alleged lack of diligence and legal knowledge is surprising and unacceptable because in his previous steps the applicant had demonstrated the opposite.

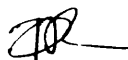
From the foregoing, notwithstanding the absence of affidavits in reply, this application has no merits and I proceed to dismiss it with cost, because the applicant has not accounted for the delay in filing the intended appeal, having lodged a notice of appeal within time.

DATED at MBEYA this 23rd day of February, 2023.

I. P. KITUSI
JUSTICE OF APPEAL

The Ruling delivered this 24th day of February, 2023 in the presence of the Applicant and 1st Respondent in person and in the absence of the 2nd, 3rd and 4th Respondents is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL