

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 299/17 OF 2021

WEMA MOYO.....APPLICANT

VERSUS

MONDAY MWAFOONGO.....RESPONDENT

(A second bite application for Extension of Time to file an application for leave to appeal, following the refusal by the High Court of Tanzania at Dar es Salaam

(Maige, J.)

Dated the 09th day of June, 2021

in

Misc Land Application No. 602 of 2020

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RULING

21st February, & 3rd March, 2023

RUMANYIKA, J.A.:

This is a second bite application for extension of time made under rule 10 and 45A (1), (b) of Tanzania Court of Appeal Rules, 2009, the Rules. Wema Moyo, the applicant is seeking the indulgence of the Court to enlarge time for her to file an application for leave to appeal to the Court, after refusal of a similar application by the High Court of Tanzania, Land Division (Maige, J.) on 09/06/2020. The application is supported by an affidavit of Wema Moyo. Monday Mwafongo, the respondent resisted the application by filing an affidavit in reply.

It is intended to challenge a decision on Land Appeal No. 16 of 2019 delivered by Simfukwe, a Resident Magistrate- Extended Jurisdiction at Kinondoni. Aggrieved by the decision, the applicant instructed advocate Reuben A. Simwanza who filed a notice of appeal against the decision. Trusting that all would go well, the applicant let the advocate proceed with the matter while following up and getting feedback. But she got worried as the advocate became hostile for quite sometimes and did not pick her calls or answer her text messages until the decision was out. Then, it transpired to her that, she was already time barred to challenge it. Consequently, she replaced advocate Simwanza with advocate Emmanuel Joachim Msengezi who advised her to file an application for extension of time to apply for leave to appeal to the Court. She filed it before the High Court but was dismissed on 08/06/2021, hence this application on three grounds reproduced hereunder:

- 1. The High Court has refused to extend time on first application.*
- 2. That the first application had sufficient causes but was refused by the High Court.*
- 3. There are serious and peculiar points of law involved in the decision of the Kinondoni/Kivukoni in Extended Land appeal No. 16 of 2019 subject of the intended appeal, which needs to be established and certified by the High Court for this Court's consideration and determination.*

At the hearing of the application, the applicant and the respondent had the services of Messrs. Emmanuel Msengezi and Gwamaka Mwaikugile learned counsel respectively.

Mr. Msengezi adopted the contents of an affidavit supporting the application and averred that, the alleged misconduct and serious inaction of advocate Simwanza who abandoned the applicant's matter, resulting to her delay constituted good cause. To bolster his point, Mr. Msengezi cited our unreported decision in **Felix Tumbo Kisima v. TTCL and Another**, Civil Application No. 01 of 1997. He argued further that, a party cannot be punished for the mistakes made by his advocate. On that legal aspect of his argument, he referred me to our decision in **William Getari Kagere v. Equity Bank and Another**, Civil Application No. 24/08 of 2019 (unreported). Finally, Mr. Msengezi urged me to hold that, good cause has been shown and exercise my discretion to grant the applicant an extension of time sought.

Replying, Mr. Mwaikugile adopted the contents of an affidavit in reply and contended that, Mr. Msengezi is the one who might have the conduct of the matter before, and filed the applicant's notice of appeal (Annexure MM-1 to the an affidavit in reply). Therefore, he argued the applicant's counsel could not blame his fellow advocate Semwanza for abandoning the matter,

and that, the two cases of **Felix Tumbo** (supra) and **William Getari** (supra) cited by Mr. Msengezi are distinguishable. Mr. Mwaikugile added that, the applicant had failed to account for each day of the delay, as the Court pronounced itself time and again. Finally, he urged me to dismiss the application for lack of good cause as the applicant only seeks the Court's mercy.

Having examined the record and heard the counsel's arguments considerably, the issues for my determination are: **one**, whether the application is competent before this court and **two**, if issue number one is answered in the affirmative, whether the applicant has met the required threshold to warrant the grant of the extension of time.

On the competence of the application, the applicant seeks an extension of time to apply for leave to appeal to the Court, which contravenes section 47(1) of the Land Disputes Courts Act Cap 216 as amended by the Written Laws (Miscellaneous Amendments) Act No. 8 of 2018. Because, as the law stands, leave to appeal is no longer a requirement when High Court seats as a land court. See- **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 and **Twaha Michael Gujwile v. Kagera Farmers Cooperative Bank**, Civil Application No. 352/04 of 2021 (both unreported).

It follows therefore, that, with respect, the present application was improper and uncalled for. It is out of place and has to be struck out.

Moreover, under the enabling provisions of rules 10 and 45A (1)(a) of the Rules, the limitation period to file a second bite application for extension of time is fourteen days from the date of refusal in the first bite. See- our unreported decisions in **Mwajuma Ahmada Mzee (Himidi Ramadhan Mkuya-Legal representative) v. Hadia Ahmada Mzee & 2 Others**, Civil Application No. 104/15 of 2019 and **Njowoka M. M. Deo & Another v. Mohamed Musa Osman**, Civil Application No. 78/17 of 2020. However, as said before, in the present case, the High Court dismissed the applicant's first bite application on 09/06/2021 and she filed the present application on 28/06/2021. This is about 19 days later. It was filed five days late contrary to the rules without a certificate of delay being appended. The application is thus time barred and struck out.

However, without prejudice to the foregoing, it is now a well settled legal principle that, an extension of time is grantable upon the applicant demonstrating good cause for the delay. The Court has so pronounced itself in a number of cases including **FINCA (T) Ltd & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported).

In the present case, the point is whether the applicant has shown sufficient cause to warrant the grant of extension of time. Looking at the applicant's affidavit, she consistently threw blame on advocate Simwanza who previously had the conduct of the matter for being negligent and not cooperating with her. With respect, that one does not constitute good/sufficient cause for grant of extension of time as it has been decided by the Court for a number of times, for instance in **Tauka Theodory Ferdinand v. Eva Zakayo Mwita** (As administrator of the estate of the late Albanus Mwita) & **3 Others**, Civil Reference No. 16 of 2017 (unreported). I wish to stress that, a party and advocate, in this case the applicant and advocate Simwanza had an agent and principal relationship only. Therefore, that case had never ceased to be the applicant's. It is no wonder, as deposed under 5 of her affidavit that, she kept on tracking its development such that, if things went wrong she was prepared to suffer the consequences.

Moreover, the above three grounds of application sound more of points of grievance for the intended appeal. They do not disclose good cause to grant her an extension of time. For instance, the first ground is all about a statement of the results on the first bite application, the second ground is a complaint that, she was wrongly refused an extension of time whereas more interestingly, the third ground concerns with existence in the impugned

judgment some points of law worth to be "certified" and determined by the Court. The third ground therefore, would suggest that, in that regard the present application was mistaken for an application for a certificate on point of law, envisaged under section 5(2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 which ought to be the domain of the High Court in the first place.

In the end, the application is devoid of merit and is hereby dismissed with costs.

DATED at DAR ES SALAAM this 1st day of March, 2023.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 3rd day of March, 2023 in the presence of Mr. Emmanuel Msengezi, learned counsel for the Applicant, and Mr. Emmanuel Msengezi holding brief for Mr. Gwamaka Mwaikugile, learned counsel for the Respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL