

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

CIVIL APPLICATION NO. 385/02 OF 2021

**THE REGISTERED TRUSTEES OF NATIONAL
MUSLIM COUNCIL OF TANZANIA APPLICANT
VERSUS**

**THE REGISTERED TRUSTEES OF
ARUSHA MUSLIM UNION RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania,
Land Division at Arusha)**

(Masara, J.)

dated the 13th day of March, 2020

in

Land Case No. 29 of 2012

RULING

29th September, 2022 & 19th February, 2024

MASHAKA, J.A.:

By notice of motion, the applicant seeks for an extension of time under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) to file an appeal against the decision of the High Court (Land Division) at Arusha in Land Case No. 29 of 2012 dated 13/03/2020 between the same parties. The application is supported by an affidavit affirmed by Haruna Idi Msangi, the applicant's advocate.

Basically, the parties had a dispute over ownership of a piece of land located at Plot N. 34, Block G Area "F" Arusha Municipality. The

applicant instituted Land Case No. 29 of 2012 before the High Court (Land Division). In its decision dated 13/03/2020, whereby the respondent was declared the lawful owner of the disputed land. Aggrieved by the decision, the learned counsel for the applicant timely lodged a Notice of Appeal to the Court on 27/03/2020 within 14 days from the date of delivery of the judgment. The applicant also lodged a letter addressed to the Deputy Registrar on 18/03/2020 requesting to be supplied with certified copies of pleadings, proceedings, orders, rulings, judgments and decree of the High Court.

It was further averred that Deputy Registrar had supplied some documents namely; decree, judgement, proceedings and exhibits that were tendered during the hearing ordered by Court of Appeal. However, it was contended that Deputy Registrar had not supplied the following documents; namely; plaint with annexures filed in court on 02/08/2012; written statement of defence filed on 19/09/2012; plaintiff's final submission filed on 16/08/2013; final submission by defendant dated 16/08/2013; plaintiff's final submission dated 02/12/2019; and defendant's final submission dated 02/12/2019.

Before he could institute the appeal, the learned counsel for the applicant fell sick and was indisposed from 14/04/2020 to 03/10/2020 when he underwent surgery at Aga Khan Hospital at Dar es Salaam. Thus, it was averred that he could not make follow ups on the missing documents which had not been supplied by the Deputy Registrar. According to her averments, that was the reason she failed to institute the appeal within time and the Deputy Registrar declined to issue a certificate of delay to that effect.

Mr. Msangi further argued that the applicant made copies of the pleadings and documents that were not supplied from the appeal records of the Court of Appeal in Civil Appeal No. 300 of 2017 between The Registered Trustees of Arusha Muslim Union (appellant) and The Registered Trustees of National Muslim Council alias BAKWATA (respondent). He had requested by letter dated 9th February 2021 to use photocopies of the missing documents which required certification as true copies of the original by the Deputy Registrar for preparing the record of appeal and also enable the Deputy Registrar to issue a certificate of delay. Unfortunately, by letter dated 25th May 2021 the Deputy Registrar did not issue a certificate of delay for the reason that they were supplied with all necessary documents for the preparation of the record of appeal on time. Mr.

Msangi argued that if the Deputy Registrar had supplied all the necessary documents for the preparation of the appeal, he/she would have communicated to the applicant that the documents were ready for collection, which was not the case.

Further at paragraph 12 of affidavit, the learned advocate deposed that the applicant intends to challenge the judgment and decree of the High Court on grounds of illegalities.

In reply, Mr. Edmund Ngemela learned advocate representing the respondent contested the grant of the application. Mr. Ngemela contended that the applicant's counsel was admitted in hospital from 09th October, 2020 to 13th October, 2020 and for the rest of the days he was an outpatient. Mr. Ngemela referred his letter Ref: EQA/ADV/2029/12/46 dated 17/12/2020 though it was not part of the record contending that their records showed the applicant was served with the missing documents and that no steps have been taken for appeal purposes. At paragraph 3 of respondent's affidavit in reply she averred that all the documents were served on the applicant on time. Though he could not be specific in terms of when; which document; by what means and the source of his assertions on the service of the documents on the applicant.

From the averments and submissions by parties, the issue for determination is whether the applicant has advanced good cause to warrant the grant the extension of time. Under rule 10 of the Rules, it is upon the party seeking such order to provide good cause for having not done what ought to have been done within the time prescribed by the relevant statute. See **Michael Lessani Kweka v. John Eliafye** [1997] T.L.R. 152; and **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported).

The discretion of the Court to extend time under rule 10 of the Rules is unfettered, but in **TANZANIA REVENUE AUTHORITY v TANGO TRANSPORT CO LTD, TANGO TRANSPORT CO LTD v TANZANIA REVENUE AUTHORITY**, Consolidated Civil Applications No. 4 of 2009 and 9 of 2008 (unreported), the Court held that, in considering an application under the rule, the courts may take into consideration factors such as, the length of the delay, the reason for the delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is granted.

In a number of decisions by the Court, there are reasons to be considered as good cause. I find it relevant to echo the benchmarks

articulated in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), where the Court emphasized several benchmarks to be taken into consideration in granting or refusing extension of time:

- "(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 apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- (d) If the court feels that there are other sufficient reasons, such as the existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged". (Emphasis added)***

In the instant application, the applicant is praying for extension of time to lodge an appeal against the decision of the High Court. In terms of rule 90(1) of the Rules, the appeal was to be instituted within sixty days from the date the notice of appeal was lodged. At paragraph 4 of supporting affidavit, the applicant averred that the notice of appeal was lodged on 27th March, 2020 and thus the appeal ought to have been lodged by 27th May, 2020. The appeal could not

be lodged due to Mr. Msangi's sickness. Instead, this application was lodged on 22nd June, 2021.

Having gone over the record, it gives the impression that the learned advocate for the applicant was admitted on 9th October, 2020 and discharged on 13th October, 2020. Also, it is the applicant's contention that he was not notified by Registrar to collect the necessary documents. The applicant has not accounted for the days of delay after being discharged from hospital to the date of lodging the application.

Moving to the second issue averred by the applicant at paragraph 12 of supporting affidavit is that the impugned decision of the High Court is tainted with illegality. Mr. Msangi amplified that the finding of the High Court that the defendant was a lawful society under the laws of Tanzania because she followed proper procedures in procuring its registration, and was incorporated under the Trustees Incorporation Ordinance was against the decision in **Arusha Muslim Union v. BAKWATA**, Land Appeal No. 33 of 1990 (unreported), where the Court declared the defendant as unlawful society on the premise that it was not registered as a society (at page 6) as required by section 12 of the Society Act.

The position of the law is settled that once the issue of illegality of the impugned decision is raised, itself is sufficient ground to warrant extension of time sought. The Court consistently held that an issue of illegality in a decision sought to be challenged on appeal constitutes good or sufficient cause for the court to exercise its discretion to grant extension of time. In **Principal Secretary Ministry of Defence and National Service v. Devram Valambia** (1992) T.L.R 185, the Court held: -

"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty, even if it means extending time for the purpose, to ascertain the point if the alleged illegality be established to take appropriate measure to put the matter and record right."

Subscribing to the excerpt above, despite the unaccounted days of delay, it is my considered view that the applicant raising illegality of the impugned decision by itself constitutes sufficient reason for extending time to ascertain whether or not there is illegality and if any, appropriate action be taken to put the record right.

In fine, I proceed to allow the application and grant extension of time to lodge the appeal within sixty days from the date of delivery of this ruling.

Costs will be in the cause.


It is so ordered.

DATED at DAR ES SALAAM this 16th day of February, 2024.

L. L. MASHAKA
JUSTICE OF APPEAL

The Ruling delivered on this 19th day of February, 2024 in the presence of Ms. Safina Mohamed, learned counsel for the Applicant and Mr. Edmund Ngemela, counsel for the Respondent, is hereby certified as a true copy of the original.




O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL