

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC.CIVIL APPLICATION NO. 174 OF 2017**

*(C/F High Court of Tanzania Arusha Registry Land Appeal No 60/2016)*

**TLUWAY LESI .....APPLICANT**

**VERSUS**

**LAZARO MATHAYO BADADA.....FIRST RESPONDENT**

**QAMBEY LESI.....SECOND RESPONDENT**

**RULING**

*Date of last Order: 04/06/2018*

*Date of Ruling: 27/07/2018*

**BEFORE: S.C MOSHI, J.**

The applicant, Tluway Lesi, filed this application for extension of time to file application for leave to the Court of Appeal in respect of Land Appeal No 60/2016 at the High Court of Tanzania at Arusha. The application is sought under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E 2002. The application is supported by the affidavit of the applicant.

Before me, the applicant was represented by Mr. Koisenge learned advocate and respondents were represented by Mr Sambo learned advocate. The application was disposed off by the way of written submissions. Submitting in support of the application Mr. Koisenge submitted that, going by the records, and averments in the supporting Affidavit, it is indeed not disputed that after delivery of

Judgment by the first Appellate Court, the Applicant lodged Notice of Appeal and requested in writing for copies of Proceedings, Judgment and Decree and the same were served to the Respondent's Counsel; being by then the undisputed last known address of services. The Applicant running against time and whilst the requested copies of proceedings and Judgment and Decree were not supplied; the Applicant on June 23<sup>rd</sup>, 2017 filed Misc. Land Application No. 75/2017 for leave to appeal to the Court of Appeal. It was his submission that, this Application was filed on the fourteenth day however the Application was filed without attachment of the Court decision which was to be appealed against. On September 25<sup>th</sup>, 2017 before the presiding Judge Hon. Dr. M. Opiyo, the Application was withdrawn with leave to re-file however it was subject to the law of limitation hence this Application. Upon rectification of the previous shortcomings by attaching the decision sought to be appealed against. The Applicant was successful supplied with the copies of the necessary documents on October 09<sup>th</sup>, 2017 as per attachment TL3 respectively.

He submitted that, the jurisprudence of this Court and the legal fraternity has been well established that for this Court to exercise its discretionary power and grant extension of time, there must be sufficient reasons disclosed to do so – **MICHAEL L. KWEKA v. JOHN ELIAFYE [1997] TLR 152**; in the case at hand, the Applicant has been all along acting diligently in all aspects. At the time of lapsing of fourteen days which are days span for Application for leave to be filed, the Applicant was not supplied with the said

relevant copies hence he filed the Application timely. However that Application was then withdrawn before the Judge having considered the impact and designation of rule **49(3)** of the **Court of Appeal Rules** which makes it necessary and mandatory for the decision sought to be appealed against to be attached in the Application for leave. The rule reads in verbatim that;

"Every Application for leave to Appeal shall be accompanied by a copy of the decision against which it is desired to appeal and where Application has been made to the High Court for leave to appeal by a copy of the order of the High Court." [Underline supplied]

He further submitted that, the Applicant had all sufficient reasons to justify the delay as; firstly; he filed Notice of Appeal and requested for necessary copies timely; second the documents were delayed to be supplied and he timely filed the Application however without attaching copy of the decision sought to be appealed against. It should be noted with caution that the Respondents in their Counter Affidavit alleged that such copies were ready for collection earlier nevertheless they do not state exactly, if at all, when the documents were ready for collection. Assuming that the documents were ready for collection, then as a matter of courtesy the Deputy Registrar would have notified the Applicant in reply of his request letter however that was not the case. He prayed for this court to grant this application.

Opposing the application the respondent counsel submitted that the applicant did not advance sufficient reasons to convince this court to grant this application. It was his further submission that the alleged documents which the applicant has submitted that they were necessary to attach in the application for leave the said documents are not necessary at all when the applicant is applying for leave to appeal in first instance in the High Court.

It was his submission that, the term sufficient cause has not been defined by any written law but there are numerous authorities of the Court of Appeal of Tanzania which laid down the facts to be considered in assessing if the applicant has demonstrated sufficient reasons. The guideline were demonstrated in the case of **Lyamuya Construction Company Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No 2 of 2010 (unreported)** the principles reads :

- (a) The applicant must account for all period of delay*
- (b) The delay should not be inordinate.*
- (c) The application 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 decisions sought to be challenged"*

It was Mr. Sambo's submission that the applicant has failed to meet the above established principles as each day of delay has to be

accounted for otherwise they would be no point of having rules prescribing periods within which certain steps have to be taken.

After carefully reviewing the record and the submission made by both parties, the main issue is whether or not good cause has been shown. **Black's law Dictionary** (ninth Edition) defined good cause as a legally sufficient reason. The term good cause is a relative one and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause. However, there are factors that are to be considered by the court, See the case of **Regional Manager Tanroads Kagera Vs Ruaha Concrete Company Limited**, Civil application No 96 of 2007 Court of Appeal of Tanzania at Dar es salaam. (Unreported) Nsekela JA, held that:-

*"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules. In the case of **Ratna v Kumarasamy and Another** (1964) 3 All ER 933, Lord Guest had this to say at page 935A –*

*"The rules of court must, prima facie be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise*

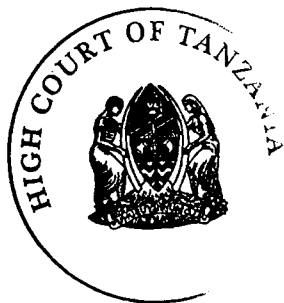
*its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation”*

In the instant case, it is evident from the record that the applicant filed the application for leave on time but later it was withdrawn with leave to re-file because the decision of the High Court was not attached, but after they were supplied with the copies of the High Court decision they then filed the present application.

Taking into consideration the circumstances surrounding this case and the fact that the applicant did not sit idle he made a follow up of his matter in court, I am of the considered view that good cause has been established for this court to exercise its discretionary powers to extend the time for the applicant to file his application for leave.

In the result, the application is granted. The intended Application should be filed within 14 days.

No order as to costs.



  
**S.C. MOSHI**

**JUDGE**

**27/07/2018**