

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 85 OF 2022

*(C/F Land Appeal No. 40 of 2020 High Court Arusha Registry, Original Application No. 29 of 2016 District
land and Housing Tribunal of Karatu)*

ANTHONY TLUWAY 1ST APPLICANT

FILMAT TLUWAY 2ND APPLICANT

VERSUS

LEA AMA LULU (Administrator of the Estate of the

Late Veronica Amnaay)RESPONDENT


RULING

5th December, 2022 & 17th March, 2023

TIGANGA, J.

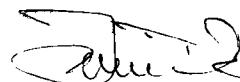
The applicant is seeking for extension of time so that he can file application for leave to appeal to the Court of Appeal of Tanzania against the decision of this court (Gwae, J.) in Land Appeal No. 40 of 2020, which was delivered on 18th March, 2022.

The application through a chamber summons is made under Rule 10 of the Court of Appeal Rules, 2009, and section 14 (1) of the **Law of Limitation Act, Cap 89** [R.E 2019] and is supported by applicants' joint



sworn affidavit by both applicants. The same was opposed by the respondent who filed his counter affidavit thereof. According to their sworn affidavit in support of the application, the applicants deposed that, after this Court had delivered its judgment on 18th March, 2022. On 25th March, 2022 they lodged their Notice of Appeal to appeal to the Court of Appeal of Tanzania and on the same day they were supplied with copies of proceeding, judgment and decree. They went on saying that, they expected their Advocate one Qamara Valerian to proceed with filing the appeal but he abandoned them and despite several phone calls, he never responded. Further to that, by the time they decided to take matter into their own hands, time had already lapsed, hence the current application. According to them, the delay was caused by someone else and not on their own volition.

Opposing the application, the respondent deposed in the counter affidavit that, the applicants were full aware of the procedure and that is why on their own filed the Notice of Appeal. Also that, they did not reasons for delay to entitle them the extension of time. During hearing of the application which was by way of written submission, the applicants appeared in person and unrepresented whereas the respondent was represented by Mr. Sabato Ngogo, learned counsel.

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Supporting the application, the applicants jointly submitted that, according to the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, for the extension of time to be granted, the applicant must account for all period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy and if the court feels that the reasons are sufficient will use its discretion and grant the requested extension of time. They submitted that, during appeal and even after this Court's decision, they paid and were represented by Mr. Qamara Valerian. However, after the latter had filed Notice to Appeal to the Court of Appeal, he abandoned them and despite several follow ups in vain, they started to make their own efforts as they could not afford to get another Advocate within that short period of time. According to them, the fact that they could not find another Advocate within short period of time is sufficient to grant them extension of time as held in the case of **Felix Tumbo Kissima vs Tanzania Telecommunication Co. Ltd and Another** [1995] TLR 57. They prayed that, this Court grant them their application as sought.

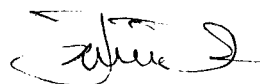
In reply, Mr. Sabato submitted that, the applicants have neither accounted for their delay nor showed sufficient cause for this Court to grant

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them extension of time. He averred that, counting from 18th March, 2022 when the decision was delivered to 06th July, 2022 when this application was admitted was 108 days which none of the applicants accounted for.

More so, the fact that, their Advocate Qamara abandoned them does not feature anywhere in their affidavit hence making it an afterthought. He cited the case of **Viettel Tanzania Ltd vs Asa General Supplies & Construction Co. Ltd**, Civil Application No. 126/08 of 2021, CAT at (Mwanza). The Court of Appeal underscored the importance of not putting blames to Advocates for their inactions without advancing enough evidence to prove the same. Since the applicants failed to either depone such facts in their affidavit or attach Qamara's affidavit that he abandoned them, their claims remain unfounded. He prayed that the application be dismissed with cost. There was no rejoinder.

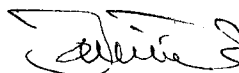
After summarizing the rival arguments from both parties, the question for determination is whether this application for extension of time has merit. It is a trite principle that, grant of extension of time is entirely upon court's discretion, which however should be exercised judiciously. Moreover, the grant is not automatic, a party has to convince the court that he/she has



genuine grounds and sufficient reasons for the court to exercise its discretion and grant extension as it was held in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No 12 of 2012, CAT.

There is no statutory definition to what a good cause must entail in extending time, it can however be due to myriad of thing such as the duration of delay-whether the delay is inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See; **Attorney General vs. Tanzania Ports Authority & Another**, Civil Application No 87 of 2016 CAT and **Ramadhan J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported).

In the application at hand, the applicants claimed that, as soon as this Court delivered its judgment, they filed Notice of Appeal to Appeal to the Court of Appeal which was filed on 25th March, 2022. From thereon they claimed that, their Advocate abandoned them until 6th July, 2022 when they managed to file the current application which is more than three months



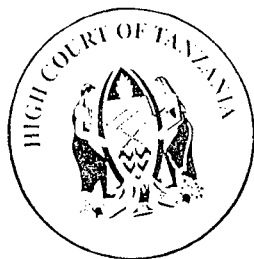
unaccounted for. Mere claims/allegations that applicants' Advocate abandoned them for more than three months without proof substantiating the same, it remains an afterthought which this court cannot condone. In the case of **Hassan Bushiri vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 the requirement of accounting every day of delay was emphasized as follows;


"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

In my considered view, the applicants were required by law to account all days delayed, which they did not do and failure to do so entitles them not, the application they have advanced. In light of the above, I find this application devoid of merits and proceed to dismiss it with cost.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 17th day of March, 2023




J.C. TIGANGA
JUDGE