

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF TABORA

AT TABORA

MISCELLANEOUS LAND CASE APPLICATION NO. 34 OF 2022

*(Arising from Judgment and Decree of the High Court of Tanzania at
Tabora in Land Appeal No. 22 of 2019)*

BARAKA HAMIS -----APPLICANT

VERSUS

CHARLES EMMANUEL KAPESULA -----RESPONDENT

RULING

Date 18/04/2023 & 23/06/2023

BAHATI SALEMA, J.:

The applicant Baraka Hamis has approached this Court praying for an extension of time to lodge a notice of intention to appeal to the Court of Appeal of Tanzania. The application was made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019]. The respondent in this application is Charles Emmanuel Kapesula.

The application was supported by an affidavit duly sworn by the applicant and the reasons for delay advanced by him in the affidavit as well as in reinforcement submission made by the learned counsel Mr. Machere Mkaruka are that the applicant fell sick on the 21st day of September 2021 to 17th of October 2021 and as a result, he was admitted at Sengerema D.D. H Hospital and later assigned to regular continuous attendance and checkup due to complications that he developed.

Another reason advanced by the applicant is that he managed to file the application of this kind within time but on the 10th day of August 2022, the same was struck out by this Court on a preliminary objection raised by the opposite side.

During the hearing which was conducted in the absence of the respondent ; Mr. Mkaruka, learned counsel submitted that there is illegality on the face of the record in Land Appeal No. 22/2019 where the Court did not consider the arguments and cases cited by the applicant.

Having heard from the applicant, this court will be guided by the guidelines cherished in the case of ***Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 CAT at Dar es Salaam*** where the Court of Appeal of Tanzania listed for consideration on applications for the grant of 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 a point of law sufficient importance; such as the illegality of the decision sought to be challenged*

The record in Land Appeal No. 22 of 2019 shows that the judgment was delivered on 24/09/2021 and during its delivery both the applicant and the respondent were not present in person. The applicant has told this Court that on 21/09/2021 he fell sick and was hospitalized until 17/10/2021 so the judgment was delivered in his absence as he was in the hospital bed that is why he failed to lodge a notice of appeal on time (see attached annexure B-3)

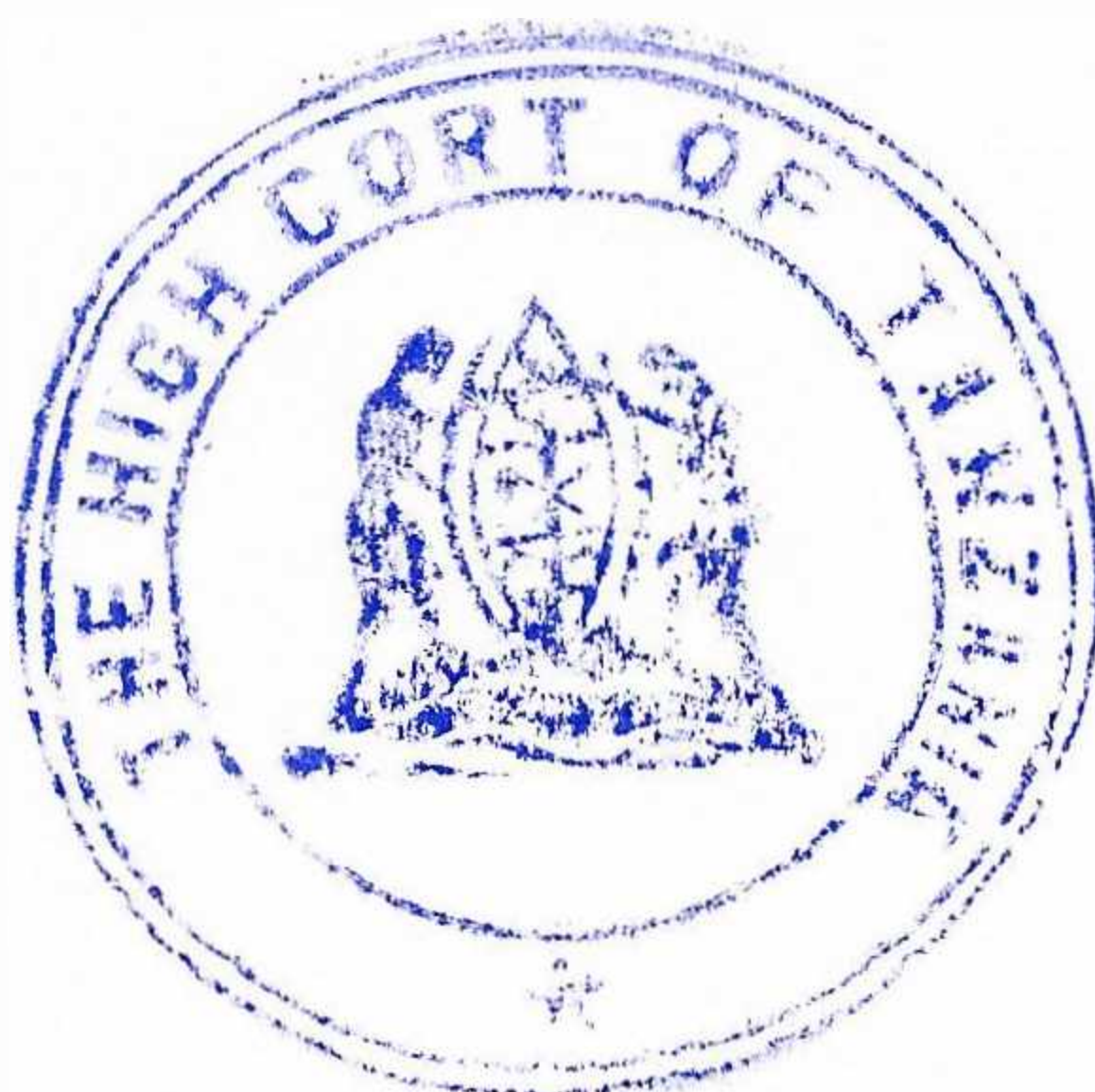
This court also had time to traverse the record of this application, the case file reveals that this application was filed to this Court on 28/10/2022 almost 22 days from the date Misc. Land Case Application No. 3 of 2022 was struck out on 07/10/2022. The reasons for the delay advanced by the applicant speak of the days of sickness that occurred in September 2021(a year before) but it says nothing about the delay of 22 days from the time the first application was struck out. If the applicant was keen enough to act upon the matter, he would have acted promptly by filing a fresh application immediately.

Regarding the allegations of illegalities on Land Appeal No. 22/2019 that the learned judge did not consider the applicant's arguments and cases cited by him, I went through the typed judgment of this Court and found that the submissions of the appellant are found from page 5 to 7 of the judgment and learned judge determined the appeal by re-evaluating the evidence of the trial court in line with the submission made by the learned counsel. Having read the whole judgement I find no fault of illegality as alleged by the applicant.

On account of the above discussion, the applicant has failed to demonstrate sufficient cause for an extension of time and has failed to account for each day of the delay. That being said and done, I have no other option than to dismiss the application as I hereby do.

No order as to costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "A. Bahati Salema".

A. BAHATI SALEMA
JUDGE
23/06/2023

Court: Ruling delivered in presence of applicant only.



**A. BAHATI SALEMA
JUDGE
23/06/2023**

Right of Appeal fully explained.



**A. BAHATI SALEMA
JUDGE
23/06/2023**