

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TABORA DISTRICT REGISTRY)

AT TABORA

MISC. LAND APPLICATION NO. 19 OF 2023

(Arising from Land Application No. 31 of 2022, Land Appeal No. 23 of 2020 before the High Court of Tanzania at Tabora, arising from Tabora District Land and Housing Tribunal in Land Application No. 28 of 2020, originating from Kalunde Ward Tribunal in Land Application No. 1 of 2016)

SHABANI MAGANGA..... APPLICANT

VERSUS

MATHEO MISELYA..... 1ST RESPONDENT

HAMISI RAMADHANI..... 2ND RESPONDENT

MWANTUMU BUSHIRI..... 3RD RESPONDENT

Date of Last Order: 13.06.2023

Date of Ruling: 26.06.2023

RULING

KADILU, J.

The applicant having been dissatisfied with the decision of the High Court of Tanzania at Tabora in Land Appeal No. 23 of 2020, intends to appeal to the Court of Appeal of Tanzania. Under the legal representation of Ms. Flavia Francis Advocate, the applicant filed an application to this court seeking for leave to file an application for certification on a point of law. The application was made under Section 47 (3) of the Land Disputes Courts Act and is supported by an Affidavit of the applicant.

In reply thereof, the respondents filed a counter affidavit sworn by their Advocate, Mr. Akram William Magoti. The grounds of this application as

may be discerned from the applicant's affidavit and submission by Ms. Flavia Francis are that, the delay is for fourteen (14) days only. The impugned decision was delivered on 22/08/2022. The applicant filed Land Application No. 31 of 2023 seeking certification of this court that there is a point of law to be determined by the Court of Appeal. The said application was struck out on 29/03/2023 for being time-barred. According to Ms. Flavia, the applicant filed the present application online on 11/04/2023 and the hard copy was filed in the court's registry on 13/04/2023.

The learned Advocate informed the court that all along, the applicant has not been idle rather, he was busy in the court's corridors pursuing his matter. Ms. Flavia made reference to the case of ***Perpetua Msengi v Daniel Petro Dobog & 2 Others***, Misc. Land Application No. 48 of 2018, High Court of Tanzania at Tabora in which it was stated that, where the applicant for extension of time has not been sitting idle, but has at all time been engaged in applications necessary to enable him access the judicial system, then that is a good and sufficient ground to warrant extension of time. The learned Counsel implored this court to grant the extension of time as sought.

Mr. Akram William Magoti, learned Advocate opposed the application mainly for the reasons that the applicant has not demonstrated good and sufficient causes for the delay, nether has he accounted for each day of delay as required by the law. Mr. Akram informed the court that before granting extension of time, the court is supposed to consider factors such as the

length of delay, reasons for the delay, the degree of prejudice which is likely to be suffered by the respondent if the application is granted, illegality (if any) found in the impugned decision and, the applicant should account for each day of delay.

The learned Advocate referred to the case of ***Omari R. Ibrahim v Ndege Commercial Services Ltd***, Civil Application No. 83/01 of 2020, Court of Appeal of Tanzania at Dar es Salaam and the case of ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010. He added that the weaknesses which caused the applicant's earlier application to be struck out is not a ground to justify extension of time to be granted by the court. Mr. Akram opined that the delay for fourteen (14) days is inordinate as in the case of *Omari (supra)*, it was held that delay of even a single day should be accounted for. He urged the court not to grant the application as it does not fulfil the legal requirements.

Having gone through the prayers set out in the chamber summons and the grounds stated in the applicant's affidavit as well as submissions by the learned Advocates, the issue for determination is whether the applicant has demonstrated a good cause of delay for this court to grant him extension of time. The law does not define what a good cause is. However, case law has established factors to be considered in determining whether good cause has been established or not. As articulated by Mr. Akram, some of the factors include, the length of the delay, the reasons for the delay; whether there is

an arguable case such as whether there is a point of law or the illegality in the decision sought to be challenged; and the degree of prejudice to the respondent if the application is granted.

In this matter, it has been shown that the applicant filed his application in time, only that it was struck out on legal technicality. I should hasten to state here that, this ground is a sufficient reason to warrant the application to be granted. It amounts to a technical delay which the applicant was not to blame. Courts have held in several cases that a technical delay is justifiable and excusable. *See for example the case of **Fortunatus Masha v William Shija & Another** [1997] TLR 154, **Salvand K. A. Rwegasira v China Henan International Group Co. Ltd**, Civil Reference No. 18; of 2006, **Zahara Katindi & Another v Luma Swalehe & 9 others**, Civil Application, No. 4/05 of 2017, **Yara Tanzania Limited v D.B. Shapriya & Co. Ltd**, Civil Application No. 498 of 2016, and **Samwel Kobelo Muhulo v National Housing Corporation (NHC)**, Civil Application No. 302 of 2017.*

In **William Shija's Case**, the Court of Appeal stated as follows:

"A distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delay in the sense that the original appeal was lodged in time, but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted."

In the present case, the applicant acted promptly after the pronouncement of the ruling of the court striking out the first application. In these circumstances, an extension of time ought to be granted. Accordingly, the application for extension of time to file an application for certification on the point of law is hereby granted. The applicant is ordered to file his application within fourteen (14) days from the date of this Ruling. No order as to the costs.

Order accordingly.



KADILU, M.J.

JUDGE

26/06/2023

Ruling delivered in Chambers on the 26th Day of June, 2023 in the presence of Mr. Akram William Magoti, Advocate for the Respondents.



KADILU, M.J.,

JUDGE

26/06/2023.