

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 478 OF 2022

(Arising from Miscellaneous Civil Application No. 123 of 2017)

BAZILLA BENEDICT KISOMOAPPLICANT

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

THE REGISTRAR OF TITLES.....2ND RESPONDENT

THE COMMISSIONER FOR LANDS.....3RD RESPONDENT

RULING

19th July & 13th September, 2023

BWEGOGGE, J.

This is an application for an extension of time to lodge a notice of intention to appeal and an application for leave to appeal out of time to the Court of Appeal of Tanzania against the decision of this court in Miscellaneous Civil Application No. 123 of 2017 delivered on 11th December, 2020. The

application is brought under section 11(1) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and supported by an affidavit of the applicant.

The facts of this case are as follows: The applicant was the owner of the parcel of land described as Plot No.22/1 Block 15 Kibada in Temeke Municipality, Dar es Salaam. She was issued with a Certificate of Title No. 127939. Sometimes in 2015, she became aware that the 3rd respondent rectified the land register by deleting her name and offered the said parcel of land to *Wanawake Na Maendeleo Foundation (WAMA)* and issued them with another certificate of title vide No.144120. Disgruntled, the applicant filed a Land Case 256 of 2016 against the above-named respondents jointly with WAMA in this court. However, that suit was struck out for the reasons that the applicant had no right to institute a fresh suit but ought to have filed an appeal in this court within three months from the date of decision or order of Registrar of Titles. The applicant preferred an appeal to challenge the decision of the Registrar of Titles and filed an application (Misc. Civil Application No. 123 of 2017) for the extension of time in which to appeal out of time. Unfortunately, the said application was dismissed. Undaunted, the applicant lodged an application for revision (Civil Application No.22/1 of 2021) in the Court of Appeal. Likewise, the application was found

incompetent and dismissed on the ground that the applicant had a right to appeal. Hence, the present application.

The applicant herein was represented by Mr. Rajabu Mlindoko, learned advocate, whereas Ms. Selina Kapange, learned state attorney, represented the respondent. The application was argued orally. The substance of submissions made by counsel herein follows hereunder.

Submitting in chief, Mr. Mlindoko argued that, the delay to file a notice of appeal timely was occasioned by time spent by the applicant in prosecuting the revision case filed in the Court of Appeal. That it is now a settled principle that delay in taking an action within statutory time occasioned by prosecuting another matter in court constitutes what is termed as "*technical delay*". To support his position, he cited the case of **Elly Peter Sanya vs. Ester Nelson** (Civil Appeal No.151 of 2018) [2020] TZCA 157. Therefore, the counsel opined, the delay to file the application herein amounts to technical delay in law.

Further, the counsel acknowledged the obligation imposed on the applicant to account for each day of delay as the condition precedent for grant of an application of like nature, as per the principle in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4. And, the counsel submitted that the applicant herein promptly lodged this application after the delivery of the decision of the Court of Appeal. That the application for revision was decided on 18/10/2022 whereas this application was filed on 28/10/2022. That the 10-day interval was utilized in preparing pleadings and filing the same in court. The counsel opined that taking into consideration the circumstances of this case, the time taken to file the application herein after the conclusion of the revision proceedings in the Apex Court is not inordinate. The counsel cited the case of **Murtaza Mohamed Raza Virani & Another vs. Mehboob Hassanali Versi** (Civil Application 448 of 2020) [2023] TZCA 6 to bring his point home.

Apart from the above, the applicant's counsel prayed this court to consider the illegality of the impugned judgment as a ground for the extension of time. That the trial judge raised a point of law *suo motu* and decided on it

without affording the parties an opportunity to address that issue. In the same vein, the counsel faulted the trial judge on the ground that instead of striking out the application he erroneously dismissed the same. Moreso, the counsel alleged that the trial judge failed to consider the fact that the applicant was denied the right to be heard by the commissioner before his name was deleted from the land register. The counsel referred the mind of this court to paragraph 5 of the applicant's affidavit in which particulars of the alleged illegality are stated. On the above premises, the counsel asserted that the applicant has demonstrated sufficient cause to warrant grant of extension sought for.

Submitting in reply, Ms. Kapange contended that the applicant failed to advance sufficient cause to warrant this court to exercise its discretion to grant the extension sought. That the facts deposed in the affidavit supporting the application herein entails that the applicant exercised the right to revision instead of the right to appeal whereas the Court of Appeal dismissed the revision proceedings instituted by the applicant for reason being incompetent. Further, the counsel contended that the decision of the Court of Appeal was entered on 18/12/2022 whereas this application was

filed on 31/12/2022. Therefore, the period of 12 days was not accounted for.

In respect of the principle of technical delay invoked by the applicant, the counsel charged that the time spent in prosecuting the matter in the Court of Appeal cannot be termed as technical delay because the applicant failed to take appropriate steps to take actions as required by law.

Further, the counsel charged that the applicant filed the revision after the expiry of 55 days from delivery of the ruling of this court. That this period was not accounted for. The counsel bolstered her position by citing the cases; **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania** (supra) and **Wambele Mtumwa Shahame vs. Mohamed Hamis** (Civil Reference No.8 of 2016) [2018] TZCA 39.

In concluding her arguments, the counsel contended that the plea of illegality in the circumstances of this case is misconceived. That the dismissal order entered by this court with respect to the application for extension preferred by the applicant was based on the applicant's failure to account

for the delay. On the above grounds, the counsel prayed this court to find the applicant herein bereft of merit and dismiss the same with costs.

In rejoinder, Mr. Mlindoko reiterated his earlier stance and countered that the alleged 55 days taken by the applicant to file revision in the Apex Court was within the statutory period of 60 days. Therefore, the applicant was not obliged to account for such a period. The counsel reiterated his assertion that the applicant herein has advanced sufficient grounds to warrant the extension of time sought. This is all about the submissions made by counsel herein.

The issue for determination by this court is whether the applicant has advanced good cause to warrant extension of time sought.

It is settled law that in the application for the extension of time, the applicant is obliged to advance sufficient cause to warrant grant of extension. The factors to consider by this court include, whether or not the application has been brought promptly; the absence of any or valid explanation of delay; lack of diligence on part of the applicant; the applicant's ability to account for the entire period of delay; and the existence of a point of law of sufficient

importance, such as the legality of the decision sought to be challenged. See the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra), among many others, in this respect. It is also the rule of law that, each day of delay has to be accounted for. See the cases; **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No.3 of 2007, CA (unreported) and **John Ackley Matoi vs. Khalid Bakari Kileo** (Civil Reference No.6 of 2020) [2023] TZCA 6, among others, in this respect.

The applicant's counsel argued that the time spent in prosecuting revision proceedings in the Court of Appeal should be excluded because it amounts to technical delay. Unarguably, it is a settled principle that the period spent in court prosecuting cases amounts to technical delay which is excusable. In the case of **Fortunatus Masha vs. William Shija and Another** [1997] TLR 154 the Apex Court made the following observation:

"A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a fresh appeal has to be instituted. In the circumstances, the negligence if any refers to the filing of

an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal."

See also the cases; **Elly Peter Sanya vs. Ester Nelson** (Civil Appeal 151 of 2018) [2020] TZCA 157 and **Bank M (Tanzania) Limited vs. Enock Mwakyusa** (Civil Application 520 of 2017) [2018] TZCA 291.

It is an uncontroverted fact that the applicant lodged an application for revision (Civil Application No.22/1 of 2021) in the Court of Appeal. The said application was found incompetent and dismissed on the ground that the applicant had a right to appeal. Based on the principle revisited above, I am of the settled view that the time spent by the applicant in prosecuting revision proceedings in the Court of Appeal which was later found to be incompetent, amounts to technical delay.

Likewise, it is gleaned in the record of this case that the decision of the Court of Appeal was delivered on 18th October, 2022 and the present application was filed on 31st October, 2022. The applicant's counsel told this court that the application was filed on 28/10/2022. I am aware that the pleadings are filed electronically before the same are lodged in the registry of this court. Therefore, although the applicant's counsel didn't bring evidence pertaining to the actual date of filing, I am willing to agree that the electronic filing of this case was made prior to the submission of documents in the registry of this court. Be that as it may, I am in all fours with the applicants' counsel in that the period taken by the applicant herein to file this application is not inordinate in the circumstances of this case. I find the period of delay sufficiently accounted for by the applicant herein.

It suffices to point out that the applicant has advanced sufficient cause to warrant grant of extension sought in the circumstances of this case. Having arrived to the conclusion that the application herein is with substance, I find it needless to further delve into the purported plea of illegality raised by the applicant.

In fine, I find the application herein meritorious. The application herein is hereby allowed in its entirety. The applicant to file the notice of intention to appeal within 14 days and leave to appeal within clear 30 days from the date of this ruling. No order as to costs.

So ordered.

DATED at DAR ES SALAAM this 19th September, 2023.



A handwritten signature in blue ink, appearing to be "O. F. Bwego", is written over the printed name.

O. F. BWEGOGHE

JUDGE