

THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
MTWARA DISTRICT REGISTRY
AT MTWARA
MISC. LAND APPLICATION NO. 1 OF 2023

(Arising from Land Appeal No. 2 of 2022)

KASIMU FAKIHI BAKARI -----APPLICANT

VERSUS

RAMADHANI FAKIHI BAKARI -----1ST RESPONDENT

TATU FAKIHI BAKARI ----- 2ND RESPONDENT

MARIAM FAKIHI BAKARI ----- 3RD RESPONDENT

HAMISI FAKIHI BAKARI ----- 4TH RESPONDENT

RULING

Date of last order: 10.08.2023

Date of Judgement: 08.09.2023

EBRAHIM, J.:

This is an application for extension of time to allow the applicant to lodge an application for leave to appeal to the Court of Appeal against the decision of this Court in Land Appeal No. 2 of 2022. The application is made under **Section 11 (1) of the Appellate Jurisdiction Act [Cap 141 R.E 2019], Section 47 (1) and**

(2) of the Land Disputes Courts Act [Cap 216 R.E 2019], Section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019], Rule 45 (a) and Rule 46 (1) of The Tanzania Court of Appeal Rules, 2019, GN No. 368 of 2009 as amended by GN No. 362 of 2017 and Section 95 of Civil Procedure Code, [Cap 33 R.E 2019].

The application is supported by the affidavit of the applicant, Kasimu Fakihi Bakari. Opposing the application, the respondents filed a joint counter affidavit sworn by Ramadhani Fakihi Bakari, Tatu Fakihi Bakari, Mariam Fakihi Bakari and Hamisi Fakihi Bakari.

At the hearing, the applicant enjoyed the services of Mr. Hussein Mtembwa, learned Advocate while the respondents appeared in person. The application was argued by way of written submissions filed in this court by the parties as scheduled by the court.

In his submission Mr. Mtembwa argued that on 30.01.2019 the Respondents unsuccessfully filed Land Application No. 8 of 2019. Aggrieved with the said decision the Respondents appealed to this Court vide Land Appeal No. 2 of 2022 where the appeal was

allowed. On 21.11.2022 the Applicant through his advocate wrote a letter to this court requesting to be supplied with the copies of proceedings, judgment and decree and on the same date he filed a Notice of Appeal to the Court of Appeal at Mtwara Registry. Having been not supplied with the requested copies, on 20.01.2023 he wrote a reminder letter and on 06.02.2023, he was supplied with the said proceedings, judgment and decree. On 07.02.2023, Mr. Mtembwa had to send them to the Applicant at Newala District of Mtwara for perusal and he received them on 08.02.2023. By that time, time to file application for leave to appeal had lapsed. He received instructions to file this application on 10.02.2023 and filed the same on 15.02.2023.

He submitted that the applicant failed to lodge his leave to appeal on time due to the reason that the copies of the judgement and decree were lately served to him. Hence the instant application.

He argued that this court has discretionary powers to extend time upon establishment of sufficient cause as provided under

Section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019]. Thus, failure to be supplied with the copies of judgment and decree which caused the delay to file the instant application by the Applicant is sufficient cause to grant an extension of time, argued Mr. Mtembwa. To cement his argument, he cited the case of **Felix Tumbo Kisima vs. TTCL Limited and Another** (1997) TLR 57 CAT and the case of **Mansoor Daya Chemicals LTD vs. National Bank of Commerce**, Civil Application No. 8 of 2016. He contended further that the degree of delay is explainable because only 9 days passed from the date when the copies of judgment and decree were supplied to them. Out of which one day was used to transfer the said copies to the Applicant for perusal and other days were for preparing the instant application. He concludes by arguing that they have an arguable appeal he prayed for the application to be granted.

In reply, the respondents through their joint written submission submitted that there is no law or case law which expressly provides that an application for leave shall be accompanied with a copy of judgment, decree or order. He said **Rule 45 (a) of**

the Court of Appeal Rules, 2019 provides that an application may be given informally.

He submitted further that the reason stated by the Applicant is unsound and has no legal basis, because he knew since the day of judgment that he was aggrieved by the decision that's why he lodged notice of appeal on time. He added that it is the notice of appeal which institute the appeal and the Applicant was duty bound to take necessary steps which was to file leave. To cement his argument he cited the case of **Beatrice Mbilinyi vs. Ahamed Mabkhurt Shabiby**, Civil Application No. 475/01 of 2020 CAT where the Court strike out notice of appeal after the appellant failed to take necessary steps after filing notice of appeal. He contended therefore that the reason by the Applicant is the procedure invented by him.

Further to that the respondents referred to the case **Tanzania Coffee Board vs. Rombo Miller Ltd**, Civil Application No. 13 of 2015 and **Kombe Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Application No. 379/01 of 2018 CAT on the principal of the law that the Applicant is required to account

for each day of delay. Counsel for the Respondent insisted that six (6) days have passed after the instruction which were not accounted for. He prayed for the application to be dismissed with costs.

I have given due consideration to all the materials on the record in light of the submissions of the parties and the authorities relied upon. The question that I have to determine is whether there is good cause for extension time.

It is the jurisprudence of our jurisdiction that the discretion of granting an extension of time lies within the discretion of the court and that the same has to be judiciously exercised. The same is also granted upon the applicant presenting sufficient reasons thereto. The Court of Appeal has in a series of cases laid down the criterions for consideration by the court before exercising its judicial discretion to extend time. In the case of **Paradise Hotel Resort Ltd vs Theodore N. Lyimo** (Civil Application 435 of 2018) [2019] TZCA 156 (16 May 2019), the Court stated as follows:

"... but the Court consistently considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged":

In the celebrated case of **Lyamuya Construction Company Vs. Board of Trustees of Young Women's Christian Association of Tanzania**, the court prescribed among other factors that: -

"(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." [Emphasize added].

From the application before this Court, I find that the applicant delayed from the judgment which was delivered on 18.11.2022. The Applicant through his advocate wrote a letter to be availed with copies of judgment and decree on 21.11.2022 which was followed with a reminder letter on 20.01.2023 as per **Annexure KFB-2 collectively** and **Annexure KFB-3**. He was supplied with

copies of judgment and decree on 06.02.2023. On 15.02.2023 it's when this application was filed in this court. So the Applicant has to account for the 8 days delayed. It is obvious from the above given facts that the delay was not caused by the Applicant rather by the court's failure to supply with the documents within time; nor, would this court term the delay as inordinate. This is because the Applicant did not say that he needed copies of Judgment to attach to the application rather to have informed option before he could decide to appeal. More-so, being availed his copy of Judgment and decree is his right. He requested the same before expiry of time to appeal unfortunately time elapsed before he could be supplied with the same.

On this reason alone and for the interest of justice, the Applicant has demonstrated good cause for the delay and the period used to prepare this application is justifiable. In exercising its discretionary power this court proceeds to grant the Applicant the extension of time as sought. In the upshot the Applicant is availed thirty (30) days from the date of delivery of this ruling to

lodge his intended application. Costs shall follow the main event.

Accordingly ordered




R.A Ebrahim
JUDGE

Mtwara
08.09.2023.