

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. LAND APPLICATION NO. 98 OF 2023
(Originating from High Court in Land Case No. 7 of 2011)

SAVINGS AND FINANCE COMMERCIAL BANK.....APPLICANT
VERSUS

DR. ABUBAKAR MSAFIRI SWALEHE.....1ST RESPONDENT
JOYCE KWANDU WANGA.....2ND RESPONDENT
NDERA AUCTION MART & GENERAL BROKERS.....3RD RESPONDENT
JAMHURI MARTIN NYAMAGEMA.....4TH RESPONDENT

RULING

05th February & 09th February, 2024.

Kilekamajenga, J.

The first and second respondents are husband and wife. During the subsistence of their marriage, the second respondent secured a loan of Tshs. 15,000,000/= from the applicant and mortgaged their dwelling house which is situated on plot number 349, Block HH at Nyakato area within Mwanza Municipality. It is alleged that, when processing the loan, the second respondent did not disclose the fact that she was married to the first respondent. According to the evidence adduced during the trial, the second respondent informed the applicant that she was a widow. It is further alleged that, the loan facility was not serviced prompting the applicant to sale the mortgaged house in order to realise the unpaid loan. The mortgaged house was consequently sold to the fourth respondent at a public



auction. Thereafter, the first respondent emerged and challenged the sale of the house by filing Land Case No. 7 of 2011 in this Court. This court at the trial level nullified the sale of the house. The applicant, being aggrieved with the decision of the trial court, appealed to the Court of Appeal of Tanzania vide Civil Appeal No. 129 of 2020. The appeal was finally called for hearing on 28th August 2023 where the Honourable Court of Appeal noticed an anomaly in the appeal to the effect that, the notice of appeal was not served to the fourth respondent. Consequently, the appeal was declared incompetent and struck out with costs. The copies of ruling and order of the Court of Appeal were supplied to the applicant on 1st September 2023 and the instant application was finally filed on 05th September 2023.

The instant application was made by way of chamber application supported with an affidavit of Ms. Marina Mashimba, the counsel for the applicant, seeking an extension of time to file notice to appeal to the Court of Appeal. The applicant filed the application inline with section 11(1) of the Appellate Jurisdiction Act, Cap. 141 RE 2019. There was no response from the respondents despite being served with summons. This court ordered the matter to proceed in the absence of the respondents. In her oral submission, the counsel informed that, as the respondents have not filed any counter affidavit, according to the law, the application has not been objected. She further submitted that, the applicant has been in the court

corridors since the matter was determined by this court. There has been a lot of up and downs in pursuing court records to allow the applicant to file the appeal to the Court of Appeal of Tanzania. Even after filing the appeal, the same appeal was later found to be incompetent and consequently struck out. All this time, the applicant was in court prosecuting the case. The applicant is therefore required to start a fresh process in order to reach the Court of Appeal. In her view, there was technical delay in this case and according to the case of **Sabina Masalu Mhalagani v. Julius Masalu and 4 others**, Civil Application No. 30/08 of 2022, the applicant should benefit from such a technical delay. Ms. Mashimba further raised an issue of illegality as the reason for extension of time. To bolster her argument, she cited the case of **Shelina and 4 others v. Nyakutonya NPF Co. LTD**, Civil Application No. 186 of 2015.

In advancing the reasons to warrant extension of time, the applicant, through the legal services of the learned advocate, Ms. Marina Mashimba raised the issue of technical delay and existence of illegality in the record of the court. It is evident that the applicant filed the initial appeal in the Court of Appeal of Tanzania in time. It is very unfortunate that the same appeal was struck out for technical reasons. The applicant has now filed the instant application to approach the Court of Appeal for the second time. There is no better reason to thwart his move because all that time, the applicant has not slept on his right to prosecute the case. On technical

reasons, the applicant was delayed in filing the appeal. This alone is a sufficient ground to warrant extension of time.

Furthermore, on the issue of illegality, the case of **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and the Liquidator of TRI- Telecommunications (T) Limited v. Citibank Tanzania Limited**, Consolidated Civil Reference No. 6,7 and 8 of 2006 (unreported), stated that:

"We have already accepted it as established law in this country that where the point of law at issue is illegality or otherwise of the decision being challenged, that by itself constitute 'sufficient reason' within the meaning of rule 8 of the Rules for extending time.... As the point of law at issue in these proceedings is the illegality or otherwise of the decision of the High Court annulling the respondent's debenture with Tri-telecommunications (Tanzania) Ltd, then this point constitutes 'sufficient reason' ... for extending the time to file a notice of appeal and applying for leave to appeal. This is notwithstanding the fact that the respondent brought the application very belatedly..."

Based on principle of the law stated above, this court, in exercise of its discretion, is fully justified to enlarge time for the applicant to file notice of appeal to reach

the Honourable Court of Appeal. I hereby allow the application with the costs to follow in the court. It is so ordered.

DATED at **Mwanza** this 09th day of February, 2024.



Ntemi N. Kilekamajenga.
JUDGE
09/02/2024



Court:

Rulling delivered this 09th Day of February 2024 in the presence of the counsel for the applicant, Dr. Mwaisondola George (Advocate) but in the absence of all the respondents. Right of appeal explained to the parties.



Ntemi N. Kilekamajenga.
JUDGE
09/02/2024



