

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 86 OF 2017

**JUMANNE NASSORO SWALEHE..... APPLICANT
VERSUS
CRDB BANK PLC & CO. LTD..... RESPONDENT**

Date of last Order: 20/06/2018

Date of Ruling: 23/07/2018

RULING

Makuru, J.:

The Applicant, through the services of Mr. George Mwalali learned counsel has filed this application for extension of time within which the Applicant can be granted leave to appeal from a decision of this court dated 4th November, 2016 in Misc. Land Application No. 83 of 2016. The application is supported by Mr. Mwalali's affidavit. The application is made under section 11(1) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 and "other enabling provision of law".

Essentially, Mr. Mwalali has deposed that the delay was caused by not being furnished with copies of certified ruling and proceedings in Land Application No. 83 of 2016. He stated that he lodged Land Application No. 83 of 2016 in this court for extension of time within which to file Application for leave to appeal from the decision of this court in Land Case No. 205 of 2015 which was dismissed for lack of merit. Upon delivery of the Ruling in Misc. Land Application No. 83 of 2016 on 04th November, 2016, he lodged a Notice of Appeal intending to appeal to the Court Appeal

of Tanzania against the whole decision. He further disposed that he filed a letter requesting this Honourable Court to furnish him with certified copies of ruling and proceedings.

He further stated that after delivery of the Ruling in Misc. Land Application No. 83 of 2016 on 04th November, 2016 he was supposed to lodge an Application for Leave within fourteen days after the said decision against which it is desired to appeal. As indicated earlier, he failed to lodge the same within the stipulated time because he was not supplied with the certified copies of the ruling and proceedings.

When the application was called on for hearing Mr. Mwalali reiterated to what was deposed in his affidavit. He clarified that they applied for a copy of the Ruling on 09th November, 2016 and they were served on 21st November, 2016. They filed an application for extension of time on 29th November, 2016 but it was rejected. He said that the same was remitted to him by the Deputy Registrar on 05th December, 2016. He contended that on 01st January, 2017 he filed this application. He brought to the attention of this court that under Rule 49 (3) of the Court of Appeal Rules, 2009 as amended in 2017, he was supposed to attach a copy of the Ruling.

He cited the case of **Yusufu Same and Another Vs Hadija Yusufu**, Court of Appeal Civil Appeal No. 1 of 2002 (Dar es Salaam, unreported) whereby it was held that:

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion

however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing.”

In the present case, he argued that the court’s delay in furnishing him with a certified copy of the ruling is sufficient reason.

He was also of the view that there are some legal points of law involved which need determination by the Court of Appeal. To support his argument he referred to the case of **Kalunga and Company Ltd Vs NBC Ltd (2006) TLR 235**.

On the other side, Mr. Themistoclos learned counsel for the 1st Respondent submitted that there is no sufficient cause advanced in the supporting affidavit. He further submitted that there is more than seven days delay, from 21st November, 2016 to 07th December, 2016 when they filed this application. He was of the view that each day must be justified.

As for the first application being rejected, he submitted that it was due to negligence on the part of the learned counsel for the Applicant, which is not sufficient reason to justify extension of time. As regards the point of law, he contended that it is not in the affidavit. He submitted that the cited cases by counsel for the Applicant clearly provide that although it is the discretion of the court to grant the extension, it has to be exercised judiciously.

In rejoinder Mr. Mwalali submitted that he was active throughout this case. As his client resides in Arusha he said that , it took time to communicate with his client.

First and foremost I would like to point out that under Rule 49 (3) of the Court of Appeal Rules (supra) the applicant was supposed to attach a ruling. The said provision reads as follows:

Every application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and where application has been made to the High Court for leave to appeal by a copy of the order of the High Court.

Going through the above quoted provision it is a mandatory requirement to attach a copy of the decision which is intended to be appealed against.

Under Rule 45 (a) of the same Act, application for leave has to be filed within 14 days. The said Rule provides that:

“In civil matters-

where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, **within fourteen days of the decisions.**”

As pointed out by Mr. Themistocles the Applicant was late to file the application by 7 days.

Mr. Mwalali, learned counsel for the Applicant stated that it took time for him to communicate with his client who was in Arusha. Taking into account that the advocate needed time to study the documents and file

this application in court, I am of the view that the Applicant's counsel managed to account for the delay.

For the above stated reasons, the application is granted without costs. The application to be filed within 14 days from the date of this ruling.



C.W. Makuru
JUDGE
23/07/2018

Court: Ruling delivered in court on this 23rd day of July, 2018 in the absence of the parties. Parties to be notified.



C.W. Makuru
JUDGE
23/07/2018