

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

MISC. LAND APPL. NO.91 OF 2017

ANITA NICHOLOUS.....APPLICANT

Versus

FOSTER ELIPHAS..... RESPONDENT

Date of Last Order: 21.3.2018

Date of Ruling: 27.4.2018

R U L I N G

S.A.N. WAMBURA, J:

The applicant **ANITA NICHOLOUS** made this application under **Section 11 (1) of the Appellate Jurisdiction Act Cap. 141 R.E 2002** for orders that:

- a) *That this Court be pleased to grant an order of extension of time within which to file a notice of appeal and an application for a certificate of point of law so as to appeal to the Court of Appeal of Tanzania against the judgment and decree of the High Court (Land Division).*
- b) *That this Honourable Court be pleased to order as to costs.*
- c) *Any other or further orders as the Honourable Court may deem fit and just to grant.*

The application is supported by the affidavit sworn by **PETER NYANGI** learned Counsel for the applicant.

The respondent **Foster Eliphas** filed a counter affidavit bitterly challenging the application.

The applicant was represented by Mr. F. Stolla learned Counsel whereas the respondent was represented by Mr. Simon Rusumo Advocate.

On 21/03/2018 this court ordered the application to proceed ex parte against the respondent who failed to enter appearance despite the fact that he was dully notified.

In support of the application, Mr. Stolla prayed for this court to adopt the grounds of affidavit to form part of his submissions.

He further contended that the former applicant's Advocate Mr. Living Raphael Kimaro did not inform the applicant that judgment had been delivered on the 20th day of November 2015.

That it was on February 2016 when the applicant became aware that the judgment was already delivered after she called him.

He stated that after the applicant was informed that the judgment had been delivered, she started looking for an Advocate to give her a second opinion so that she can pursue an appeal to the Court of Appeal.

He averred that the delay to commence the appeal process within time was not caused by the applicant's dilatory actions but was caused by the failure on part of her advocate to timely inform her of the decision in the judgment. He therefore prayed for the application to be granted.

Having gone through the submissions of the applicant, the affidavital information and having considered the relevant law, I have observed that the main issue for consideration is whether the applicant has shown sufficient cause for this Court to exercise its discretionary powers to extend the time within which to file a Notice of Appeal and an application for a Certificate on a point of law so as to appeal to the Court of Appeal of Tanzania.

There is no doubt that it is in the discretion of the court to grant an extension of time. But that discretion is judicial, and so it must

be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily.

In order for the court to exercise its discretionary powers and grant an extension of time within which to take necessary steps, the court must be satisfied that the applicant has advanced sufficient reasons and has given an account for the delay.

The applicant must account for all the period of delay and that:-

- (a) The delay should not be inordinate*
- (b) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (c) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

as was held in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania** Civil Application No. 2 of 2010 (unreported).

The reasons for delay to take the necessary steps have been explained in paragraphs 7-12 of the applicant's affidavit.

In my opinion I find no justifiable reason advanced by the applicant to constitute good cause to warrant this Court to exercise its discretion to extend the time within which to file a Notice of Appeal and an application for a Certificate on a point of law so as to appeal to the Court of Appeal of Tanzania.

The applicant did not show diligence in making a follow up of her case, because by engaging an advocate it did not mean that she had abandoned her case completely. She had a duty of making a follow up of her case and make appearance during the hearing and on the date of the judgment. It is clear that she did not do this at all.

It is trite law that where there is in action/ delay on the part of the applicant there ought to be some kind of explanation or material to enable the court to exercise its discretion.

In the case of **Alimran Investment Ltd Vs Printpack Tanzania and Others** (unreported) it was held that;

“Applicant ought to explain the delay of every day that passes beyond the prescribed period of limitation”.

Unfortunately this has not been done.

Again in the case of **Tanzania Fish Processors Ltd Vs. Christopher Luha Ngangula**, Civil Appeal No. 161 of 1994 MZA sub- registry (unreported) it was held that one cannot be left to come to Court at whatever time one wishes to. Allowing this application will be allowing parties to come to court when they wish to do so and not according to the procedures which are there to be adhered to.

Having said so, the application is accordingly dismissed for want of merit with Costs.

S.A.N WAMBURA
JUDGE
27.4.2018