

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 02 OF 2021**

*(An Application arising from the Judgment and Decree of the High Court of Tanzania Land Division at Dar Es Salaam delivered by Hon. Makani in Land Application No.936 of 2018)*

**ALLY NASSORO SEMBOGA** (as Administrator of the

Estate of the late ASHA MBEGU YUSUPH) .....**1<sup>ST</sup> APPLICANT**

**YUSUPH MBEGU YUSUPH** ..... **2<sup>ND</sup> APPLICANT**

**VERSUS**

**AMINA MOHAMED** ..... **RESPONDENT**

**RULING**

Date of last Order: 22.07.2021

Date of Ruling: 06.08.2021

**A.Z.MGEYEKWA, J**

This is an application for extension of time to file a notice of appeal to the Court of Appeal against the decision of the High Court, Land Division, before Hon. Makani, J. This court dismissed the application for extension of time to appeal to the Court of Appeal of Tanzania in Misc. Application No.936 of 2018. Dissatisfied, the applicant lodged the instant application

under section 11 (1) of the Appellate Jurisdiction Act, Cap 141 [R.E.2019]. The application is supported by the affidavit of Ally Nassoro Sembuga and Yusuph Mbegu Yusuph, the applicants. The respondent opposed the application by filing a counter affidavit deposed by Amina Mohamed, the respondent.

When the matter was called for hearing on 26<sup>th</sup> February, 2021, the applicants appeared in person while the respondent did not show appearance. By the court order and consent by the parties, the application was argued by way of written submissions whereas, the applicants filed their submission in chief on 19<sup>th</sup> March, 2021 and respondent filed his reply on 14<sup>th</sup> April, 2021 and the applicant filed a rejoinder on 28<sup>th</sup> April, 2021.

Submitting in support of the application the applicant's stated that after being aggrieved by the decision of this court in the Misc. Land Application No. 936 of 2018, the 1<sup>st</sup> applicant wrote a letter requesting copies of the ruling, the drawn order, and the proceedings. He continued to submit that soon after submitting the letter, he fall sick and that he was treated by a traditional healer, he added that by that time the 2<sup>nd</sup> applicant was not in Dar es Salaam. The 1<sup>st</sup> applicant continued to submit that by the time he recovered from illness the time for filing the notice of appeal has already lapsed therefore they failed to lodge the notice of appeal on time.

In his conclusion, he urged this court to grant an extension of time to file a notice of appeal to the Court of Appeal out of time.

Responding, the respondent submitted that this application is *res judicata* as it has already been filed and determined by this court before Hon. Makani, J on 26<sup>th</sup> October 2020. She continued to submit that the applicants have alleged for this court to extend the time to file a notice of appeal out of time for reasons that the trial Tribunal delayed in supplying them the certified copies of the ruling and drawn order of the Misc. Land Application No.210 of 2018.

The respondent continued to submit that the time to lodge an appeal against the decision of the District Land and Housing Tribunal (to the High court is 45 days. He went on to state that the decision from the District Land and Housing Tribunal was delivered on the 9<sup>th</sup> May 2018 and the 45 days of the applicants to file the appeal expired on the 24<sup>th</sup> June, 2018. He further contended that the applicants filed the application for the extension of time on the 17<sup>th</sup> December, 2018, 7 months passed from the date of the decision and that the applicants failed to account for each day of the delay.

The respondent further contended that the applicants moved the court under the wrong provision of the law, as they moved the court under section 11(1) of the Appellate Jurisdiction Act, Cap 141. She continued to

submit that the cited section only applies to the high court and subordinate courts when exercising extended powers.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavit and counter affidavit, the issue for our determination is ***whether the applicant has adduced sufficient reasons to warrant this court to grant his application for extension of time to file an appeal out.***

The applicants in their submission stated that the main reason for their delay to file the notice of appeal is because the 1<sup>st</sup> applicant fall sick soon after writing the letter requesting the copies to the tribunal. They also stated that the 2<sup>nd</sup> applicant traveled outside Dar es Salaam and by the time the 1<sup>st</sup> applicant recovered from illness the time for filing the notice of appeal already lapsed.

In reply, the respondent spent much of her time discussing the matter which was not before this court as she was discussing the appeal from the District Land and Housing Tribunal to the High Court, the matter which was already been determined by this court before Hon. Makani, J in Misc. Land Application No.936 of 2018, the decision which is subject to this application. The respondent failed to understand that the instant application is about the extension of time to file a notice of appeal in order to appeal to the Court of Appeal against the decision of this court and not

the extension of time to appeal to the high court against the decision of the tribunal. Therefore, I am not going to discussing the respondent's submission as the same is out of context.

I am called upon to determine whether the applicant has established sufficient or good cause for the delay in filing a notice of appeal. The applicant's main reason for the delay is that the 1<sup>st</sup> applicant was sick, by the time he recovered the time to file the notice of appeal already lapsed and that the 2<sup>nd</sup> applicant was outside Dar es Salaam. They did not attach any document to prove the 1<sup>st</sup> applicant's sickness and the attached copy of the tickets aims to prove the fact that the 2<sup>nd</sup> applicant traveled outside Dar es Salaam, the same is not certified, and even if it was certified those tickets are blanks as they do not disclose the names of the 2<sup>nd</sup> applicant.

Reading the applicant's affidavit, it is clear that the applicants did not account for the days of delay from the date when the said application was dismissed on 26<sup>th</sup> October, 2020 to 5<sup>th</sup> January, 2021 when this application was filed, which is two months and 11 days. The applicants failed to account for these days of delay contrary to the principles laid down in the famous case of **Lyamuya Construction Company Limited v Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

The Court of Appeal of Tanzania stressed that the applicant must account for all the period of delay.

In consequence, thereto, I find that the applicants have failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file a notice of appeal to the Court of Appeal of Tanzania out of time. The application is therefore dismissed without costs.


Order accordingly.

Dated at Dar es Salaam this date 06<sup>th</sup> August, 2021.

  
A.Z.MGEYEKWA  
**JUDGE**  
06.08.2021

Ruling delivered on 06<sup>th</sup> August, 2021 in the presence of both parties.



  
A.Z.MGEYEKWA  
**JUDGE**  
06.08.2021