

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.22 OF 2020

(Arising from the Ruling of this Court in Misc. Land Application No. 242 of 2018

Dated 10th July 2019 by Hon. Maghimbi,J)

OMARY BAKARI WAAKUWA APPLICANT

VERSUS

LEONARD ATHANAS KASAMBALARESPONDENT

RULING

Date of Last Order: 07/9/2021 &

Date of Ruling: 17/09/2021

A.MSAFIRI, J.

The applicant Omary Bakari Waakuwa has filed this Application praying that this Court be pleased to grant leave for filing the notice of intention to appeal and application for a certificate of points of law out of time against the Ruling of this court dated 10th day of July, 2019. The Application is brought under Section 11 (1) of the Appellate Jurisdiction Act Cap. 141 R.E 2019 and supported by the affidavit of the applicant.

At the hearing before me, the applicant and respondent appeared in person and was unrepresented. It was through the order of this Court that the Application was argued by way of written submissions.

The reason for delay is reflected in the applicant's affidavit, paragraphs 4, 5 and 6 where it express that the applicant has fallen



seriously sick which led to failure to file notice of intention to appeal on time.

According to the applicant's submissions in support of this Application, he stated that the matter began in Mipeko Ward Tribunal via Land Dispute No. 08 of 2017 where the respondent Athanas Kasambala represented his fellows without their consent. Therefore, the applicant appealed to the District Land and Housing Tribunal for Mkuranga ,the decision of District Tribunal was not in his favour, so aggrieved, he requested to be supplied with certified copies of the proceedings and decision for appeal purpose to the High Court, but the District Tribunal failed to do so within the time. Being out of time, he filed the Application No. 242 of 2018 to this Court for extension of time to file an appeal out of time, the said application was dismissed by Hon. Maghimbi, Judge. He now wish to appeal to the Court of Appeal against the decision of this Court.

Being out of time to file notice of intention to appeal and obtaining certificate of point of law, the applicant seeks leave of this court to be extended with time, and he is in opinion that the reasons advanced in paragraphs 2,3,4,5 and 6 of his affidavit are sufficient reasons on the sense that the failure was caused by illness, he suffered blood pressure and obtained traditionally treatment at Temeke Health Centre, Dar es Salaam and Bogha viillage in Lushoto Tanga. The other reasons includes remoteness of place of domicile to this Court and financial hardship. He submitted that all these were beyond his power and control.

The applicant has raised the issue of illegality that, the Hon. Judge Maghimbi in her decision did not consider the reason of illegalities on the



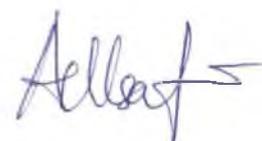
decision intended for appeal that the dispute was initially being determined by Mwanambaya Village and the respondent without power of attorney sued the applicant in the original suit.

Responding to above submission, the respondent stated that, the reasons advanced does not amount to sufficient causes, the applicant failed to file an appeal within time because of negligence act that is why the application was terminated based on section 38 (2) of Cap. 216 R.E 2019.

In his opinion, the reasons adduced to move this Court to grant the orders requested in this Application does not amount to sufficient causes as the reasons of illness and financial difficulties raised by the applicant should not be believed and taken into consideration as an excuse. He insisted that those reasons do not constitute sufficient reasons for this court to exercise her discretion of extension of time to file the intended applications. He cited the Case of ***Husna Hassan vs. Abdallah Shabani Mungai Misc. Civil Application No. 148 of 2014***, by Hon. Judge Massengi. He insisted that this Application lacks merit and hence it should be dismissed.

The central issue in applications for extension of time is always whether the applicant has advanced good cause for the delay as required by Rule 11 of the Appellate Jurisdiction Act Cap. 141 R.E 2019. The provision states;

"11.-(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may extend the



time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired."

Therefore, section 11 cited above, gives power to the Court to extend the time for doing any act fixed by the law or appeal against any decision of the Court upon the applicant showing good cause for not doing such act within the prescribed time. Factors to be taken into account in determining whether or not to exercise the Court's discretion have been outlined in various decisions of the Court of Appeal. Admittedly, such factors are not necessarily exhaustive but at the moment, they include; cause of the delay, length of the delay, whether or not the applicant has accounted for the delay, and degree of prejudice to the respondent and whether there is illegality or any issue of law of sufficient public importance in the decision sought to be challenged. See for instance the cases of; ***Lyamuya Construction Co. Ltd v. Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, Sebastian Ndaula vs. Grace Rwamafa, Civil Application No. 4 of 2014, Saidi Ambunda v. Tanzania Harbours Authority, Civil Application No. 177 of 2004 and Abood Soap Industries Ltd v. Soda Arabian Alkali Limited, Civil Application No. 154 of 2008 and Joel Silomba v. Republic, Criminal Application No. 5 of 2012 (all unreported).***



I will subject the cited authorities to the facts in the instant application and see whether the applicant has placed himself within the established parameter of the laid down factors. The reasons adduced by the applicant for his failure to file notice of appeal on time and application for certification of points of law to appeal to the Court of Appeal of Tanzania are contained in paragraph 5, 6, 7,8 of his affidavits. That from 25th July 2019 the applicant encountered serious sickness and the whole time he attended traditional treatment and at Health Centres at Temeke Mikoroshini, Dar es Salaam and later at Bogha at Vuga Village in Lushoto until 19th August 2019 when he recovered and return to Dar es Salam. These reasons are supported by a copy of medical books OBW-3 and travelling Tickets OBW-2 and OBW-4.

In my opinion based on evidence on record, considering the fact that, the applicant is an elderly person, I am convinced that, the applicant advanced sufficient causes. Although, the medical report (Annexure OBW-3) has no details as to whether the applicant was admitted and when he was discharged. Since the said medical report is backed up with travelling tickets it makes the advanced reasons valid. Having seen that reasons are valid, the question remained on whether the applicant has accounted for each day of delay. It was held by the Court of Appeal that, delay by any standard should not be inordinate but that that does not necessarily preclude the Court from exercising its discretion if the applicant succeeds in accounting for each day of the delay.

The Ruling against which the applicant intends to appeal was delivered on 10th July 2019 and this application was filed on more than 30 days from when the judgment was delivered. However, the applicant has



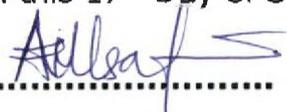
stated in his affidavit at paragraphs 5 and 7 that he was ill from 27th July 2019 to 19th August 2019 when he recovered from illness and returned to Dar es Salaam. After recovery, on 19th August 2019 he requested for copies of proceedings, Ruling and Drawn Order for which, on 24th December 2019 he was informed by the Deputy Registrar that the requested copies were available. This is proved by the Certificate of Delay which was issued by the said District Registrar under Rule 90 of the Court of Appeal Rules, Cap 141 R.E 2019 which shows that a total number of 131 days should be excluded in computing the time that is from 19th August 2019 to 24th December 2019.

By this, I am satisfied that the applicant has managed to account for the delay as per the principle laid down in the famous case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,(supra)**, where it was insisted that the applicant must account for each day of delay.

Having so observed, this court finds that the applicant has advanced sufficient reasons to move this court to grant him with extension of time within which to file the notice of intention to appeal out of time and the leave for applying out of time for certification on points of law to the Court of Appeal. This application is hereby allowed. Costs shall follow the events in the intended appeal.

Dated at Dar es Salaam this 17th Day of September 2021.




A. MSAFIRI
JUDGE