

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 293 OF 2021

(Arising from the decision of the High Court of Tanzania Land Division at Dar es Salaam in Misc. Land Appeal No. 08 of 2018)

FATUMA MRISHO APPLICANT

VERSUS

HAJI ALLY MNOLA RESPONDENT

RULING

Date of Order: 01.08.2022

Date of the Ruling: 13.09.2022

A.Z. MGEYEKWA, J

In this application, the Court is called upon to grant leave that will enable the applicant to file a Notice of Appeal to the Court of Appeal of Tanzania against the decision of this Court in Misc. Land Appeal No.8 Of 2018. The application is brought under section 11 (1) of the Appellate Jurisdiction Act,

Cap 141 [R.E.2019]. The application is supported by an affidavit deposed by Fatuma Mrisho, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deposed by Haji Ally Mnola, counsel for the respondent.

When the matter was called for hearing 1st August, 2022 the applicant and respondents appeared in person, unrepresented. On the parties' concurrence, hearing of the matter was through written submissions the filing of which followed the schedule drawn by the Court.

The applicant was the first to kick the ball rolling. He submitted that the he is aggrieved by the decision of this court in Misc. Land Appeal No. 8 of 2018 hence she decided to file a notice of appeal accompanied by an application for certification on point of law in Misc. Land Application No. 311 of 2020. He added that the application was allowed. The applicant went on to submit that later she realized that the notice of appeal went missing hence she decided to file the instant application. She stated that this court has discretionary power to extend the time for filing an appeal if it finds it just to do so. Fortifying her submission, she cited the case of Benedict Mumelo v Bank of Tanzania (CA), Civil Appeal No. 12 of 2002 (unreported).

The applicant went on to submit that she had shown good reasons for her delay. The applicant added that she did not relax since she filed an application for certification on the point of law and the same was granted. She added that the delay was not caused by the applicant's negligence but rather the reasons beyond her control, as she believed to have lodged the said notice while she did not. Supporting her submission she cited the case of **Ramadhani Nyoni v M/S Haule & Company Advocate** (1996) TLR HC this court held that:-

"In a case where a layperson, unaware of the process of the machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice."

It was her submission that according to the above provision of law, the Court has inherent powers to make sure that justice is attained without following the strict technicalities which lead to injustice and deny the applicant to exercise her right to appeal. The applicant believed that she has adduced sufficient reasons for her delay to file the notice of appeal within the time and the delay was not caused by negligence. To buttress her submission she referred this court to the case of **Felix Tumbo Kissima v Tanzania Telecommunication Co. Ltd & another** (1997) TLR 57.

On the strength of the above submission, he beckoned upon this court to grant the applicant's application to file a Notice of Appeal afresh.

In reply, the respondent urged this court to adopt his counter affidavit to form part of his submission. He submitted that this court has discretionary power to extend the time and the applicant is required to adduce sufficient grounds for extension of time to move this court to exercise its discretion in favour of the applicant. To bolster his submission he cited the cases of **CRDB Ltd v George Kilindu**, Civil Application No. 162 of 2006, and **Yusufu Same & Another v Hadija Yusufu**, Civil Application No. 01 of 2012 (unreported), the Court of Appeal of Tanzania laid down the following three principles for a court to extend time:-

- (i) *Whether the application was brought promptly.*
- (ii) *Whether there is a valid explanation for the delay.*
- (iii) *Lack of diligence on the part of the applicant (negligence)*

The respondent went on to submit that the issue for determination in the matter at hand is whether the applicant has demonstrated good causes. He argued that the application was not brought promptly to this court thus in his view the applicant was not diligent and vigilant in pursuing her rights. He added that the applicant has failed to account for the days of delay. He

stated that the law serves those who are watchful not those who sleep. Supporting his argumentation, the respondent referred this court to paragraph 3 of the applicant's written submission and cited the cases of **Loswaki Village Council and Another v Shibesh Abebe** [2000] TLR 204 and **Samson Kishosha Gabba v Charles Kingongo Gabba** [1990] TLR 133.

Reacting in respect of whether there is any valid explanation. It was his submission that there is no valid explanation for the delay since the applicant in her written submission simply stated that the copy of the notice of appeal went missing. It was his view, that the applicant did not file the notice of appeal as he did not serve the respondent as required by Rule 84 (1) of the Court of Appeal Rules. Stressed that in the instant application there is no any sufficient and reasonable explanation of the delay which is inexcusable on the part of the applicant. Supporting his submission he cited the case of **John Cronel v A. Gravo (T) Ltd**, Civil Case No. 70 of 1998.

In conclusion, the respondent urged this court to dismiss the application with costs.

I have heard the applicant and the respondent's counsel submission and the issue for determination is whether the application is meritorious.

From these rival submissions, the Court is called upon to pronounce itself on whether a case has been made out to warrant the exercise of its discretion and grant of an extension of time to file a Notice of Appeal out of time. It is worthy of note, that grant of an application for extension of time is at the discretion of the Court, however, such discretion is exercised upon the applicant satisfying the Court by presenting a credible case. It also requires that the applicant should act in a manner that upholds equity. To fortify this position, the Supreme Court of Kenya came up with a persuasive position in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others**, Sup. Ct. Application 16 of 2014. It was elucidated as follows:

"Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of courts which litigants have to lay a basis [for], where they seek [grant of it]."

Additional, the Court of Appeal of Tanzania has set guidelines to be considered before granting an application for an extension as enumerated in the case of **Ngao Godwin Lusero v Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Dar es Salaam. The said guidelines are:-

- (i) *The applicant must account for all the periods of delay*
- (ii) *The delay should be inordinate.*
- (iii) *The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) *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.*

Also see the famous case of **Lyamuya Construction Company Limited v Board of Trustees of YWCA**, CAT-Civil Application No. 2 of 2010 (unreported).

Deducing from the parties' sworn depositions and counsel's submissions, it is clear that the contention revolves around grounds that the applicant considers as sufficient cause for the delay in lodging the notice of appeal and accounting for the days of delay. Relying on the wisdom from the cited

decisions, I find that the applicant has shown good reasons for her delay to file the notice of appeal within time. I am saying so because the applicant has narrated the sequence of events and efforts taken to lodge the notice of appeal. Unfortunately, she did not file the notice of appeal within time. In my considered view, the applicant was caught in a situation where she tried to pursue her rights by filing an appeal at the Court of Appeal, however, she was unaware of the process of the machinery of justice.

For the aforesaid reasons, I find it prudent for this court to exercise its discretionary power to grant an extension of time to the applicant to file the Notice of Appeal out of time within 45 days from today.

Order accordingly.

Dated at Dar es Salaam this date 13th September, 2022.



A.Z.MGEYEKWA

JUDGE

13.09.2022

Ruling delivered on 13th September, 2022 in the presence of both parties.



A.Z.MGEYEKWA

JUDGE

13.09.2022