

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

MISC.LAND APPLICATION NO. 297 OF 2022

(Arising from Land Appeal No. 72 of 2021)

OMARY ATHUMANI KIUMBO.....1ST APPLICANT
SHABANI ATRHUMANI KIUMBO.....2ND APPLICANT
ALLY SULTAN KIUMBO.....3RD APPLICANT

VERSUS

SEIF KONDO NGOTA.....1ST RESPONDENT
SHABANI SEIF NGOTA.....2ND RESPONDENT
TATU SEIF NGOTA.....3RD RESPONDENT
RAMADHANI SEIF NGOTA.....4TH RESPONDENT

Date of Last Order: 16.11.2022
Date of Ruling: 12.12.2022

RULING

V.L. MAKANI, J

The applicants are seeking for extension of time within which to issue a Notice of Appeal and to file leave to appeal to the Court of Appeal against the decision of this court in Land Appeal No. 72 of 2021 (Hon. A.Z. Mgeyekwa, J).

The application is made under section 11(1) of the Appellate Jurisdiction Act CAP 141 RE 2019 and is supported by the joint

affidavit of the applicants. The respondents filed a joint affidavit to oppose the application.

With leave of the court the application was argued by way of written submissions. The applicants adopted the contents of the affidavit as part of their submissions. They said immediately after the decision of this court on 17/11/2021 they filed an application for leave to appeal to the Court of Appeal which was struck out for want of correct citation of the provision of the law. They said when that application was struck out the prescribe time of of 30 days had already expired and so they had to file this application for extension of time.

The applicants stated that an application for extension of time must be supported with sufficient reasons and according to them paragraphs 4, 5, and 6 of their affidavit give those reasons. They also pointed out that the judgment which is complained of is tainted with illegality which needs the rectification of the court of appeal (paragraph 8 of the affidavit). They relied on the cases of **Regional Manager Tanroads Kagera vs. Ruaha General Company Limited, Civil Application No 96 of 2007 (CAT-DSM)** (unreported), **VIP Engineering & Marketing Limited & 2 Others**

vs. City Bank of Tanzania Limited, Civil Reference No. 7 and 8 of 2006 (unreported) and **Juto Ally vs. Lukas Kamba & Another, Civil Application No. 484/17 of 2019** (unreported). For the above reasons the applicants prayed for the application to be granted to afford the Court of Appeal an opportunity to rectify the noted illegality.

The respondents adopted the joint counter affidavit and pointed out to the court that the 3rd respondent TATU SEIF NGOTA was not among the respondents in Land Appeal No. 72 of 2021. The respondents further submitted that an application for extension of time is the discretion of the court which has to be exercised judiciously. They relied on the case of **Yusuf Sawe & Hawa Dada vs. Hadija Yusuf [2002] TLR 7** and went on stating that the applicants have failed to account for each day of the delay and the delay is inordinate. They relied on the case of **Lyamuya Construction Company Limited vs. The Board of Registered Trustees of Young Women Christian Association (CAT-Arusha)**(unreported) and **Bushiri Hassan vs. Latiga Lukio Mshana, Civil Application No. 3 of 2007 (CAT)**(unreported). The respondents said the appellants failed to serve notice of appeal and

failed to account for the delay and this results to the dismissal of the application. They concluded by stating that no sufficient reasons has been given to account for the delay to warrant extension of time to the satisfaction of the court.

In rejoinder, the applicants reiterated what was submitted in the submissions in chief and emphasized that the delay has been fully accounted for as immediately after the striking out of the previous application this present application was filed. They said the applicants have demonstrated sufficient reasons to warrant extension of time.

Having gone through the rival submissions by the parties, the main issue for determination is whether the applicants have succeeded to adduce sufficient reasons to warrant the grant of this application.

It is settled law that extension of time is the discretion of the court. However, for the court to exercise such discretion, the applicant has the duty to place before the court sufficient reasons for the delay for the court to judiciously exercise such discretion. Some principles, though not exhaustive in exercising the discretion by the court were stated in the case **Lyamuya Construction Company Limited** (supra).

In this application the prayers by the applicants are essentially two that is, extension of time to file: (i) Notice of Appeal to the Court of Appeal, and (ii) an application for leave to appeal to the Court of Appeal. The reasons for the said extension are, according to the applicants, found in paragraphs 4,5 and 6 of their affidavit. The said paragraphs are reproduced herein below:

- 4. That being aggrieved by the decision delivered by Honourable Justice A. Mgeyekwa we immediately filed notice of intention to appeal to the court of appeal of Tanzania and on 15th December, 2021 we filed an application for leave to appeal to the Court of appeal.*
- 5. On 15/05/2022 the application for leave was struck out for want of correct citation. Copy of the Ruling is annexed hereto.*
- 6. That when our application was struck out the prescribed period of limitation (30 days) had already expired. Hence the application at hand.*

It is noted that the previous application in this court was struck out on 11/05/2022 (not 15/05/2022) for being incompetent. Now, from 11/05/2022 to 07/06/2022 when this present application was filed is about 27 days. These days have not been accounted for by the applicants. In other words, it is not known what transpired between 11/05/2022 to 07/06/2022 when this application was filed. In the case of **Bushiri Hassan** (supra) it was stated that:

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

As noted, the applicants have not stated what happened after the Order of this court of 11/05/2022 as such they have not acted diligently as no reasons have been stated why they waited for 27 days to file this present application while it was them who had conceded to the preliminary objection that was raised. Since they have failed to account for such delay, this application is bound fail. The Court of Appeal has times and again insisted that an applicant has to account for every day of delay. (See also the case of **Tanzania Sugar Board Vs. Rombo Millers Limited, Civil Application No. 13 of 2015, (CAT-Arusha)** (unreported).

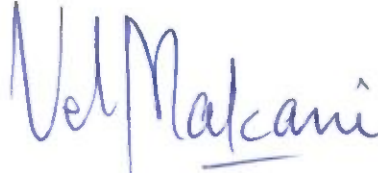
The applicant raised the issue of illegality of the decision of this court, that is, whether it was proper for this honourable court as a second appellate court to overturn the decisions of the lower Tribunals in total while disregarding that the said decisions were based on factual evidence. Indeed, it is now settled, that an alleged illegality has to be apparent on the face of the record. Once it is established that the illegality in the impugned decision is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time

(see the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported). In the present application the illegality alleged is not quite apparent. The applicants have alleged that the decisions of the lower courts were based on factual evidence, but I must say that this allegation is too general, and it does not clearly show in detail the alleged illegality. The factual evidence alleged would entail the court to dig for details which in my view would involve a long-drawn process, and this would no longer be said to be illegality apparent on the face of the record. In view thereof, this ground cannot be taken to be a reason for extension of time as prayed for by the applicants.

In view of the above, it is clear that no sufficient reasons have been duly advanced by the applicants to warrant extension of time. I therefore proceed to dismiss this application with costs.

It is so ordered.




V.L. MAKANI
JUDGE
12/12/2022