

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 680 OF 2022

REDEMPTA MCHAWILE..... APPLICANT

VERSUS

EVARIST C. KISAKA..... RESPONDENT

RULING

19th Dec, 2022 & 14th Feb, 2023

L. HEMED, J

In this application, the Applicant Redempta Mchawile is seeking for extension of time within which to file application for leave to Appeal to the Court of Appeal of Tanzania and for a certificate on point of law against the decision of this Court (Hon. V.L. Makani, J) in Land Appeal No. 142 of 2021, delivered on 30th day of May, 2022 in favor of the respondent herein, EVARIST L. KISAKA Who was declared the lawful owner of the disputed suit property.

It should be noted that prior to this application, the applicant had filed Misc. Land Application No. 344 of 2022 in this same Court seeking for leave to appeal to the Court of Appeal of Tanzania. On 12/09/2023 the said application was struck out before my sister Hon. Msafiri, J on the ground of citing a wrong provision of the law and that, since the matter

originated from the ward Tribunal, the applicant was supposed to seek for certification on point of law as per section 47 (3) of the Land Disputes Courts Act, [Cap 216 RE 2019]. She obtained a copy of ruling on 7th October, 2022 and presented for filing the present application in this Court on 27th October, 2022.

The application was argued by way of written submissions. The applicant enjoyed the service of Madame Salha Mlilima, learned advocated while the respondent was in person.

Arguing in support of the application the applicant asserted that the delay in filling the application at hand was not due to the negligence on the side of the applicant. According to the applicant, the delay was caused by the late supply of the copies of the order that struct out Misc. Land Application No. 344 of 2022.

The applicant relied on the case of **Lyamuya construction company Ltd vs Board of Registered Trustees of Young Women's Christian Association on of Tanzania**, Civil Application No. 2 of 2010 and in **NBC Limited and Another v. Bruno Vitus Swalo**, Civil

Application No. 139 of 2009 in trying to convince this court to find that the applicant was not negligent and that the length of delay was reasonable.

In reply thereto, the respondent submitted that the applicant has failed to account for each day of delay as she failed to state how many days were spent while she was waiting for the copy the ruling in Misc. Land Application No. 344 of 2022. To cement his point, he cited the case of **Sebastian Ndaula v. Grace Rwamata** (Legal Personal Representative of Joshua Rwamafa), Civil Application No. 4 of 2014; the case which set forth the requirement to account for each day of delay.

In her rejoinder submission, the applicant reiterated what she stated in her submissions in chief that there was no unnecessary delay caused by the applicant.

Having gone through the submissions made by the parties, my duty is to deliberate on whether good cause has been demonstrated by the applicant to warrant this Court grant leave to the applicant to file an application for leave to appeal to the Court of Appeal out of time. The provisions of Section 11 of the Appellate Jurisdiction Act, [Cap. 141 RE 2019] does not specifically provide for the factors to be considered by the

Court in determining whether or not to extend time. However, *vide* case law, Courts have developed guidance in assessing whether or not good cause has been established by the Applicant.

In the 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, the Court of Appeal set out the following guiding factors.

"(a). The applicant must account for all the period for delay;

(b). The delay should not be inordinate;

(c). The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and

(d). 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."

Again, in **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 the Court stated that: -

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion."

I consider the period of prosecuting Misc. Land Application No. 344 of 2022 as technical delay up to 12th day of September, 2022. However, the present application was filed on 27th October, 2022 almost after 46 days from the date of striking out Misc. Land Application No. 344 of 2022. In view of the decision of the Court of Appeal of Tanzania in **Sebastian Ndaula v. Grace Rwamata** (Legal Personal Representative of Joshua Rwamata), Civil Application No. 4 of 2014, the applicant had to account for all 46 days of the delay. I am holding so because in **Sebastian Ndaula case** (supra), it was stated thus failure to account for each day of delay amounts to a failure to advance "good cause" to justify the extension of time.

I have gone through the affidavit deposed by the applicant one Redempta Mchawile in support of the application and could not find facts

stated as to what the applicant was doing from 12/09/2022 up to 27/10/2022.

The applicant has stated in the submissions that the delay was caused by the late supply of the ruling of this Court which struck out Misc. Land Application No. 344 of 2022 on 12th September, 2022. However, she has not stated what efforts she deployed to get the said copies of the ruling. The applicant did not produce any document showing that she requested the copy of the ruling. This connotes that the applicant was not active in making follow-up of the ruling, she was sloppy!

As per the rule laid down in the case of **Lyamuya** (supra), the applicant did not show diligence in handling her matter. She acted negligently in the prosecution of the action that she intended to take, that is, to have the copies of the ruling and apply for leave to appeal to the Court of Appeal of Tanzania.

Additionally, going through the affidavit in support of the application, the 46 days of delay have not been accounted for. In the case of **Bushiri Hassan vs Latifa Mashayo**, Civil Application No. 3 of 2007, it was stated that: -

"Delay even of 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".

From the foregoing, I find that the applicant was not diligent enough and has failed to account the days of delays. The application is thus short of merits and it deserves dismissal. I thus proceed to dismiss the entire application with costs. It is so ordered.

DATED at DAR ES SALAAM this 14th day of February, 2023.



COURT: Ruling is delivered in the presence of Ms.Salha Mlilima Advocate of the applicant and the respondent appearing in person this 14th February 2023. Right of appeal explained.

