

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

**MISC. LAND APPLICATION NO. 622 OF 2022**

(Arising from the Judgment and Decree of the High Court – Land Division at Dar es Salaam in Land Appeal No. 243 of 2021 by Kagomba, J dated 13 July 2021)

**SESARIA LEBULU MUSHI.....APPLICANT**

**VERSUS**

**HELLEN BENJAMIN MOSHI.....RESPONDENT**

**R U L I N G**

*Date of last Order: 15/12/2022*

*Date of Ruling: 06/02/2023*

**K. D. MHINA, J.**

Before me is an application in which the applicant, Sesaria Lebulu Mushi, moves the Court to extend the time within which to lodge an application for leave to appeal against the decision of this Court (Kagomba. J) delivered on 13 July 2021 in Land Appeal No 243 of 2021.

The application has been brought by way of chamber summons, made under section 14 (1) of the Law of Limitation Act, Cap 89 R: E 2019 ("the LLA"), section 95 of the Civil Procedure Code, Cap 33 R: E 2019 ( "the CPC") and section 11(1) of the Appellate Jurisdiction Act, Cap. 141 R. E. 2019 ("the AJA").

The grounds in support of the application are contained in the affidavit deposed by the applicant.

The application was argued by way of written submission whereby both parties appeared in person, unrepresented.

In the submission, the applicant advanced only one reason for seeking an extension of time.

She submitted that she filed a previous application for leave, but it was struck out for citing an improper provision of law.

When she wanted to refile the application for leave, she found that she was out of time.

The reason is also revealed in paragraphs 6 and 7 of the applicant's affidavit.

In response, the respondent strongly opposed the application and submitted that the applicant established insufficient grounds to grant an extension of time.

She further submitted that the previous application was struck out due to ignorance of law and procedure. To cement her submission, she cited **Jubilee Insurance Co. (T) Ltd vs. Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020 (unreported), where the Court of Appeal held that the negligence of the applicant or the advocate or

ignorance of procedure is not an excuse and does not constitute a sufficient cause for an extension of time. She also cited **Omar Ibrahim vs. Ndege Commercial Services Ltd**, Civil Application No. 348 of 2020, where again, the Court of Appeal held that neither ignorance of law nor the counsel's mistake constitutes a good cause.

In her further submission, she argued that the applicant failed to account for the number of days she delayed since the application for leave was struck out on 25 August 2022 up to 23 September 2022 when this application was filed, which is almost 29 days. She submitted that the position of law is for the court to extend time; each day of delay must be accounted for. She substantiated her submission by citing **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No.2 of 2010 (unreported), where the appeal propounded essential factors to consider in granting an extension of time as;

- (a) To account for all period of 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) The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

Further to that, he cited **Peter Nyantahe vs. Fredrick Ngakuka**, Misc. Land Application No. 83 of 2021(HC-Land Division), where failure to account for each day of delay caused the application to be dismissed and submitted since in this application the applicant has failed to account for the delay, the application deserves to be dismissed.

The applicant did not file the rejoinder.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submission made by both learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file an appeal in this Court.

As to what may constitute a good case, the Court of Appeal in the cited case of **Lyamuya Construction Co. Ltd (Supra)** and also in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee and three others, Civil Application No 130/01 of 2020 (TanZlii)**, pointed out the following factors: -

- (a) To account for all period of 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) The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

In the application at hand, as I indicated earlier, the applicant has raised only one ground for seeking an extension; she had earlier filed the application for leave, which was struck out.

In deliberation, a brief background of the application is of “great moment” as it will provide necessary inputs in determining the application.

After the appeal, i.e., Land Appeal No. 243 of 2021 between the parties, was dismissed for want of merits by this Court on 13 July 2021, the applicant was aggrieved, and she decided to take further steps. Therefore, she filed the notice of appeal and an application for leave to appeal. On 25 August 2022, the application for leave was struck out for being filed under the wrong citation, i.e., the application was made under the wrong law.

Therefore, in short, the applicant was pursuing the application for leave to appeal which was filed within time but later struck out.

The question is whether that is a good ground for extending the time.

To answer the question, I divide the period for delay into two phases. Phase one was when the applicant filed the application for leave up to when the same was struck out, and phase two was when the application for leave was struck out and up to when this application was filed.

In deliberation, I will start with phase one and the sub-issue is whether the prosecution of an incompetent application is a good ground for extending time.

In thus, it should be noted that this is not a new phenomenon in our jurisdiction, as the Court of Appeal has already put it succinctly in several cases.

In **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (Tanzlilii), it was held that the prosecution of an incompetent appeal, when made in good

faith and without negligence, ipso facto constitutes sufficient cause for an extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay.

The respondent, when resisted the application, stated that the appeal for leave was struck out because of the ignorance and negligence of the applicant and her advocate, and as per **Jubilee Insurance Co. (T) Ltd** (Supra), the applicant should not benefit from that ignorance and negligence and should be granted an extension of time.

Having gone through the circumstances of the application at hand and of the cited case above, I find that the cited decision is distinguishable because in this application, after the previous application for leave was struck out, the applicant straight filed this application for an extension of time to file leave.

In the above-cited case, the applicant, after it came to his knowledge that he was out of time, instead of filing an application for an extension of time, he filed an irrelevant application which he withdrew after three months. After wasting three months then, he filed

the application for an extension of time. Therefore, the cited case is distinguishable and cannot be applied herein.

Flowing from above, it is; therefore, the period between the institution of the application for leave, which was filed within time, and when the same was struck out on 25 August 2022, has been justified that the same is a technical delay. The applicant was pursuing the application, which was later found incompetent.

The next issue is in phase two and the sub-issue here is whether the applicant took the necessary steps promptly in filing this application after the application for leave was struck out.

The records indicated that this application was filed on 23 September 2022. From 25 August 2022 to 23 September 2022, almost 29 days passed. Therefore, the delay is 29 days, and the question is whether 29 days can be considered an inordinate delay.

Again, this is not a new phenomenon in our jurisdiction, as the Court of Appeal in **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314 of 2019 (Tanzlii), held that;

*"The test to determine promptness is the question of fact which has to be decided on a case-by-case basis."*

In that decision, the Court of Appeal found that 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-out appeal and preparing a meaningful application for an extension of time.

In the case of **Emmanuel Rurihafi** (Supra), the Court of Appeal quoted its other decisions with a similar issue. Those cases are;

One, **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi**, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the case and observe that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate.

Two, **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) vs. Mtumwa Moshi (as the Administrator of the Estate of the late Risasi Ngwale)**, Civil Application No. 407/17 of 2019, where also a single justice of appeal observed that a period of less than 30 days be a reasonable time.

In the circumstances of this matter, where the applicant is unrepresented, I think 29 days for collecting copies of the ruling and drawn order of the struck-out application and for preparation of this application for extension of time is a reasonable time, the applicant acted promptly, and there is no inordinate delay.

Consequently, the applicant advanced a good and sufficient ground to warrant this court to exercise its discretion in granting an extension of time.

In the upshot, I grant this application for an extension time. Therefore, I order the applicant to lodge the application for leave to appeal within twenty-one (21) days from the date of delivery of this Ruling.

It is so ordered.

**DATED at DAR ES SALAAM** this 06/02/2023.



  
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**K. D. MHINA**  
**JUDGE**