

IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

CIVIL APPLICATION NO. 424/08 OF 2022

HAMISI JUMAFIRST APPLICANT

MAGOMBA HAMISI.....SECOND APPLICANT

JOSEPH LUBAKA.....THIRD APPLICANT

VERSUS

NYACHUMA MAUBE.....RESPONDENT

**(Application for extension of time to file application for leave to appeal from
the decision of the High Court of Tanzania at Musoma)**

(Galeba, J.)

dated the 17th day of April, 2020

in

Land Appeal No. 27 of 2019

.....

RULING

31st October & 10th November 2023

KIHWILO, J.A.:

In this application the applicants, by way of notice of motion filed on 02.06.2022 predicated on rules 10, 45 (b), 45A (1) (b) and 49 of the Tanzania Court of Appeal Rules, 2009 (the Rules) is seeking enlargement of time within which to lodge an application for leave to this Court against the

decision of the High Court of Tanzania at Musoma (the High Court) dated the 17.04. 2020 in Land Appeal No. 27 of 2019. The application is by way of notice of motion and is supported by joint affidavits, duly sworn by the applicants. In addition, the applicants have filed written submissions to support their quest. The application has been resisted by the respondent who filed written submissions in opposition.

For better appreciation of the gist of the application before me, it is, in my view, essential to provide abbreviated facts of the matter which is the basis of the instant application. The respondent instituted a land dispute against the applicants, at the District Land and Housing Tribunal (the Tribunal) in Application No. 200 of 2017 alleging that the applicants trespassed into his piece of land, where upon hearing the Tribunal decided the matter in favour of the respondent. Unamused, the applicants lodged an appeal before the High Court in Land Appeal No. 27 of 2019, which upon determination it dismissed the appeal.

The applicants were unhappy with the decision of the High Court and therefore, on 15.05.2020 they lodged a notice of appeal seeking to overturn the decision of the Tribunal which was affirmed by the High Court. In terms of section 47 (2) of the Land Disputes Courts Act, Cap 216, they lodged an

application for leave before the High Court in Miscellaneous Application No. 23 of 2020, the efforts that turned out to be a dead end, as the application was refused on 22.06.2020 by Galeba, J (as he then was).

Furthermore, the applicants yet lodged another application at the High Court in Miscellaneous Application No. 42 of 2020 seeking for enlargement of time within which to lodge the notice of appeal in order to challenge the impugned decision. Unfortunately, once again, on 15.12.2020 this application was struck out on account of incompetence.

It is on the basis of that backdrop that the instant application was lodged before this Court on 02.06.2022 seeking enlargement of time within which to lodge an application for leave as a second bite.

When the application was ripe for hearing before me, the applicants who appeared in person unrepresented, prayed to adopt the notice of motion, the supporting joint affidavit and the joint written submissions without more, and the respondent who also appeared in person unrepresented, equally, prayed to adopt the affidavit in reply and the written submissions without more and reiterated very briefly in clarifications that the Court should consider the time taken from the date the impugned decision was made and that, none of the applicants appeared in Court to assign

reasons that they had problems which prevented them from lodging the application timely.

According to the applicants' written submissions, the delay to lodge the application for leave before this Court as a second bite was occasioned by the fact that the applicants were pursuing Miscellaneous Land Application No. 23 of 2020 and Miscellaneous Land Application No. 42 of 2020 which in their view is sufficient cause to warrant the extension sought. On that account, they implored me to grant the application as prayed.

In response, the respondent sturdily resisted the application and contended that, the two applications were all initiated by the applicants assisted by their learned counsel one Yuda Rudovick Kavugushi, and if at all that was the main cause for the delay to lodge the application for leave, then, that is their negligence, and negligence is not an excuse for extension of time. In all, the respondent prayed that the application be dismissed with costs.

I have painstakingly examined the record and considered the competing arguments by the parties and in order to appreciate the essence of the application, it is instructive to recapitulate the provisions of rule 10 of the Rules which reads inter alia that:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after doing of that act: and any reference in these Rules to any such time shall be construed as a reference to that time as so extended."

I have reproduced the above provision deliberately in order to facilitate an easy determination on whether the application by the applicant is founded on sound basis or not.

It bears reaffirming that, the law is very settled and clear in this jurisdiction that, in order for the applicant to succeed to prompt the court to exercise its discretion under rule 10 of the Rules to enlarge the time in an application of this nature, the applicant must bring to the fore good cause for the delay. There is, a litany of authorities in this regard, but to mention a few **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported) and **Kalunga and Company, Advocates v. National Bank of Commerce Limited** [2006] T.L.R. 235.

Although rule 10 does not go further to define as to what amounts to good cause. However, case law has it that extension of time being a matter within the court's discretion, cannot be laid by any hard and fast rules but will be determined by reference to all the circumstances of each particular case. There is, in this regard, a considerable body of case law, if I may just cite the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) in which this Court stated that:

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is 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."

However, it is, insignificant to emphasize that the court's discretion in deciding whether or not to extend time, must be exercised judicially and not arbitrarily or capriciously, nor should it be exercised on the basis of sentiments or sympathy. Fundamentally, the said discretion must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error, but should not be designed at assisting a person

who may have deliberately sought it in order to evade or otherwise to obstruct the cause of justice – **See Shah v. Mbogo and Another** [1967] E.A. 116.

In this matter the question is therefore, whether or not the applicants have satisfied the conditions for the grant of extension of time as discussed above. The answer to this question should not detain me much and the reason is not far-fetched. The application of this nature, apart from rule 10 of the Rules is governed by rule 45A (1) (b) as rightly cited by the applicants themselves. According to this provision when an application for extension of time to apply for leave is refused by the High Court as it is the case in the instant matter, the applicant is entitled to apply for extension of time to the Court as a second bite. However, there is only one condition set and that is the applicant has to do so within fourteen days of such decision which refused the application for extension of time.

In this case, the applicants' application was refused on 15.12.2020 and the application for extension before this Court was lodged on 02.06.2022 instead of 30.12.2020 which is well beyond one year and six months from the mandatory fourteen days set by the law. As rightly argued by the respondent there is no explanation leave alone plausible explanation to

account for the delay. It is defies logic and common sense to argue that the delay was occasioned by the fact that the applicants were pursuing Miscellaneous Land Application No. 23 of 2020 and Miscellaneous Land Application No. 42 of 2020. Clearly, the applicants did not account for the delay. This is contrary to the dictates of the law which requires that in an application for extension of time, the applicant is duty bound to account for each day of delay. In the case of **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), faced with analogous situation we held 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."

Corresponding observations were also made in the case of **Bariki Israel v. Republic**, Criminal Appeal No. 4 of 2011 (unreported).

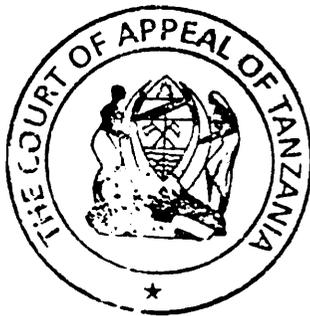
Therefore, the applicants have failed to show good cause for the delay which is the precondition for the extension of time.

To that end, I must conclude that the applicants have not demonstrated any good cause that would entitle them extension of time. In the result, this application fails and is, accordingly, dismissed with costs.

DATED at **MUSOMA** this 10th day of November, 2023.

P. F. KIHWELO
JUSTICE OF APPEAL

Ruling delivered this 10th day of November, 2023 in the presence of 2nd Applicant in person, and absence of the 1st and 3rd Applicant, also in the presence of the Respondent in person, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL