

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(IRINGA SUB - REGISTRY)
AT IRINGA**

MISCELLANEOUS LAND APPLICATION NO. 11 OF 2023

(Originating from Land Appeal No. 05 of 2018)

SHABANI MKAKANZE APPLICANT

VERSUS

**TERESIA JUDI MKAKANZE [as the administrator of the
Estate of the late JUDI MKAKANZE] RESPONDENT**

RULING

Date of Last Order: 19/03/2024 &
Date of Ruling: 19/04/2024

S.M. KALUNDE, J.:

By a chamber summons made under section 11(1) of **the Appellate Jurisdiction Act [Cap. 141 R.E. 2019]**, the applicant, SHABANI MKAKANZE, has brought the present application seeking for the following orders:

- "A. Extension of time to lodge a notice of appeal to the Court of Appeal of Tanzania against the Judgment of the High Court of Tanzania at Iringa in Land Appeal No. 5 of 2018 delivered by Honourable P.M. Kente, Judge on 16.04.2019;*
- B. Extension of time to lodge application for leave to appeal to the Court of Appeal of Tanzania against*

the Judgment of the High Court of Tanzania at Iringa in Land Appeal No. 5 of 2018 delivered by Honourable P.M. Kente, Judge on 16.04.2019;

- C. An order that costs of and incidental to this application be provided for; and*
- D. Any other order as this honourable court may deem fit and just to grant."*

The application is being supported by an affidavit dully sworn by the applicant himself. Upon being served, the respondent lodged a counter affidavit resisting the application.

The brief facts leading to the present application are that; in 2016, at the district Land and Housing Tribunal for Iringa District (henceforth "**the trial tribunal**") the respondent lodged Land Application No. 49 of 2016 against the applicant seeking for a declaration that house No. K/DOR/A/53 situated along Dodoma Road Street in Iringa was the property of Judi Mkakanze. The application terminated in favour of the respondent. The applicant was aggrieved by the decision of the trial tribunal. He unsuccessfully challenged the decision of the trial tribunal to this court through Land Appeal No. 05 of 2019. Apparently, the appeal was dismissed for being time barred.

Still aggrieved, the applicant lodged a notice of appeal seeking to challenge the decision of this court in Land Appeal No. 05 of 2019. Alongside the notice of appeal, the applicant filed Misc. Land Application 16 of 2019 for leave to appeal to the Court of Appeal. The application was dismissed for want of merits. Thereafter, the applicant successfully approached the Court of Appeal for a second bite on an application for leave. On being granted leave, the applicant lodged Civil Appeal No. 20 of 2022. However, on the 28th day of march, 2023, the appeal was struck out by the Court for being filed out of time.

The decision striking out the application was delivered on the 28th day of march, 2023 and copies of the said decision were collected by the applicant on the 31st day of march, 2023. Upon receipt of the copies of the orders, the applicant commenced communications with his advocate, Mr. Jally Willy Mongo on the appropriate way forward. It was at this point that the discovered that the Notice of Appeal was ineffectual and thus he had to apply to this court for an extension of time to lodge a notice of appeal. subsequently, the present application was lodged on the 13th April, 2023.

To prosecute the application, the applicant appeared in person unrepresented. The respondent on the other hand was represented by Mr. Marco Kisakali, learned advocate. The applicant, a lay person had nothing substantial to add to his application. He merely prayed for the court to adopt and consider the chamber summons and affidavit and grant the application.

Counterattacking the application, Mr. Kisakali started off by conceding that the period from the 18th day of April, 2019 when the judgment was delivered to the 28th day of March 2023 was covered by a technical delay. However, the learned counsel argued that the present the applicant has failed to account for the period between the 28th day of March 2023 when the appeal was struck out to the 13th day of April, 2023 when the present application was filed. In his view the application had failed to account for delay period. Regarding chances of success, Mr. Kisakali cited the case of **Seif Hassan vs. Hamis Abdallah and Another** [2011] TLR 329 for a position that chances of success was not a good cause in application for extension of time.

In a brief rejoinder, the applicant insisted that the application be granted so that he can pursue his appeal.

Regarding a prayer for application for leave to appeal to the Court of Appeal, Mr. Kisakali had earlier informed the court that in view of the amendments to section 47(2) of **the Land Disputes Courts Act [Cap. 216 R.E. 2019]** (henceforth "**the LDCA**") by section 47 of **the Legal Sector Laws (Miscellaneous Amendments) Act, 2023, Act No. 11 of 2023**, leave was no longer a requirement of law for an appeal to lie to the Court of Appeal.

Admittedly, section 47(2) of the LDCA to which this application was partly based has been amended by section 47 of Act No. 11 of 2023. The amending Act deleted subsection (2) of section 47 of the LDCA which provided for a requirement to apply for leave of this court or Court of Appeal before appealing to the Court of Appeal. As a result of the stated amendments leave of this court or the Court of Appeal is not a requirement for a person to lodge his or her appeal to the Court. Since this is a procedural law, it has the effect of operating retrospectively affecting existing matters as if they were filed before the amendment. See

Municipality of Mombasa vs. Nyali Limited [1963] EA 371 at 374. In view of the above position, I agree with Mr. Kisakali that, the second limb in the application has been overtaken by events as leave is no longer a requirement for an appeal to the Court of Appeal against the decision of this court. Under the existing framework the applicant is supposed to lodge his appeal in accordance with the provisions of the Appellate Jurisdiction Act. There is no need for leave of this court.

Next, I will consider whether the applicant has adduced sufficient reasons for this court to exercise its discretion in extending time to lodge a notice of appeal out of time. Section 11(1) which has been relied in the present case provides that:

*"11.- (1) Subject to subsection (2), **the High Court** or, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, **may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned**, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, **notwithstanding that the time for giving the notice or making the application has already expired.**"*

[Emphasis is mine]

From the above section it is clear that granting or refusing the application is within the discretion of the court. I am aware that that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. In that regard, the law is settled that an application of the present nature may be granted upon demonstration of good or sufficient reasons.

At this point I wish to state that, it has come to be a settled position of law in our jurisdiction that, whilst it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Courts discretion the Court is enjoined to consider, *inter-alia*, the reasons for the delay, the length of the delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended. See **Bertha Bwire vs. Alex Maganga**, (Civil Reference No.7 of 2016) [2017] TZCA 133; (20 November 2017) TANZLII.

Having considered the circumstances in the present case, I agree with Kisakali that the period from the 18th day of April, 2019 when the impugned judgment was delivered to the 28th day of March 2023 when

Civil Appeal No. 20 of 2022 was struck out is covered by a technical delay. I say so because during that period the applicant was prosecuting various proceedings to this court and the Court of Appeal. I am also aware that the notice of appeal in Civil Appeal No. 20 of 2022 was lodged on time.

The next question is whether the applicant acted promptly and diligently upon discovery of the fact that he was required to lodge a fresh notice of intention to appeal. In addressing this question guidance is provided in the case of **Emmanuel Rurihafi & Another vs Janas Mrema** (Civil Appeal 314 of 2019) [2021] TZCA 332 (28 July 2021) TANZLII where the Court of Appeal (Maige, J.A.) observed that:

"The test employed in determining promptness in our view is that of reasonableness. That is, whether the time taken by the appellants to file the application for extension of time was reasonable."

In the above cited case, the Court observed further that the question of reasonableness is a question of fact which has to be decided on case by case basis. In arriving at that conclusion, the Court had considered several of its previous decision including in the case of **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 the Court was of the view that 20 days was reasonable. Similarly, in **Hamis Mohamed (as the Administrator of the Estate of the late RISASI NGWALE) v. Mtumwa Moshi (as the Administered of the Estate of the late MOSHI ABDALLAH)**, Civil Application No. 407/17 of 2019 (unreported), in which a single justice of the Court considered a period less than 30 days to be reasonable time. Having observed as such the Court concluded that:

"In the circumstance of this matter and considering the fact that, the appellants are unrepresented laypersons and they have been so right from the trial, we think that, 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck- out appeal and for preparation of a meaningful application for extension of time. It seems to us that, appellants acted promptly and without negligence in applying for extension of time within which to lodge a fresh appeal."

In the instant case, Civil Appeal No. 20 of 2022 was struck out on the 28th day of March 2023. The applicant promptly obtained copies of the ruling and drawn orders on the 31st day of march, 2023. That is only three days from the date of the decision. The affidavit filed in support of the

application demonstrates that upon receipt of the copies of the ruling and drawn orders, the applicant consulted his advocate, Mr. Jally Willy Mongo on the course of action to be taken. This was done between the 03rd to the 04th day of April, 2023. Upon receipt of the advice, the applicant engaged the advocate to prepare the necessary documents and file them in court. Subsequently, the present application was filed on the 13th April, 2023. Looking at the facts of the present case, there was a delay of sixteen days only.

I have pointed out above that in **Samwell Mussa Ng'omango case** (supra), 20 days were considered reasonable whilst in **Emmanuel Rurihafi case(supra)** a delay of 22 days was considered reasonable. Similarly, a delay of 30 days was considered reasonable in the case of **Hamis Mohamed case** (supra). Drawing inspiration from the above decisions I am content that the delay of 16 days in collecting copies of the decision of the Court and lodging the present application is reasonable.

That said, I hold that the applicant acted promptly and without any negligence in applying for extension of time within which to lodge a fresh notice of intention to appeal.

In the upshot and for the foregoing reasons, I find the application to be meritorious. Consequently, I allow this application with costs. Thus, time to file a fresh notice of intention to appeal to the Court of Appeal is extended for thirty (30) days.

It is so ordered

DATED at IRINGA this 19TH day of APRIL, 2024.

A handwritten signature in blue ink, appearing to be "S.M. Kalunde".

S.M. Kalunde

JUDGE