

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 27 OF 2020

(C/F Misc. Land Appeal No. 4 of 2014 in the High Court of Tanzania, Arusha Registry)

GODWIN NGAO LOSERO.....APPLICANT

VERSUS

RISSIPA SAMSONI.....RESPONDENT

RULING

12/10/2021 & 28/01/2022

GWAE, J

The applicant, Godwin Ngao is for the second time moving this court to grant the application so as to allow him to file his application for certificate on points of law out of the prescribed time. Basically, the applicant is intending to challenge the decision of this court in Misc. Land Appeal No. 04 of 2014 delivered on the 17th September 2014 to the Court of Appeal of Tanzania, however for reasons stated in the applicant's sworn affidavit he has found himself out of time and is now seeking an order of the court extending time.

This application is brought under the provision of section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2002 and was supported by a sworn affidavit of the applicant. On the other hand, the respondent strongly opposed the application through a counter affidavit sworn by his counsel Mr. Lengai Nelson Merinyo.

It is in the applicants' affidavit where the gist of this application is found to be as follows; The applicant herein was also the applicant in Misc. Land Appeal No. 4 of 2014 where the judgment was delivered in favour of the respondent herein. Dissatisfied with the decision, intending to appeal to the Court of Appeal of Tanzania, the applicant filed his notice to appeal and thereafter filed an application for extension of time to file his application for certificate on points of law, the same was filed on the 19th January 2016 but on 13th May 2016 it was struck out for wrong citation of the provision of the law.

Apparently, on 17th June 2016 the applicant filed another application for extension of time, the same was granted and consequently, on the 28th February 2017 the applicant filed his application for certificate on points of law through Misc. Civil Application No. 16 of 2017 however on the 19th July 2017 the applicant sought an order to withdrawing the matter with leave to

refile, the order which was granted subject to Law of Limitation. On 4th September 2017 the applicant once again filed another application for certificate on points of law through Misc. Civil Application No. 102 of 2017 nevertheless on 16th September 2019 the same was struck out for being an omnibus application.

Still persisting to pursue his intended appeal, the applicant has filed this application for the second time seeking an enlargement of time within which to file an application for certificate on point of law out of the prescribed period.

In his counter affidavit, Mr. Merinyo among others contended that the applicant has not given sufficient reasons for this court to grant the prayer sought, nor has he given an account of each day of delay.

When the matter came for hearing, the applicant and respondent were represented by the learned counsel, namely; Mr. Severin Lawena and Mr. Merinyo respectively. With leave of the court, this application was argued by way of written submission. In support of the application, counsel for the applicant argued that, the delay to file his application within time was due to technical problems and urged this court to make reference to the case of

Fortunatus Masha vs. William Shija and another [1997] TLR 154. He further contended that there are illegalities on the points of law intended to be determined by the Court of Appeal of Tanzania and therefore this court should grant the application.

Seriously opposing the application, Mr. Merinyo for the respondent argued that, the applicant's affidavit does not give sufficient reasons for his delay for this court to grant the application and even the applicant's assertion that, the delay is technical cannot stand under the circumstances. The counsel's submission also faulted the previous applications filed by the applicant and furthermore stated that, he does not see the prospects of the intended appeal by the applicant as there is no point of law for determination by the Court of Appeal of Tanzania.

In his short rejoinder Mr. Lawena maintained that the delay to apply for certificate on points of law within time was as a result of technical errors which caused the applicant's applications to be struck out, he stressed that the applicant had given sufficient reasons for his delay and that this court ought to certify the points of law so that the applicant may be able to pursue his right to appeal to the Court of Appeal of Tanzania.

Examining the parties' affidavits, written submissions, case law cited by the parties' counsel and annexures thereof, the issues for determination is whether the applicant has accounted for days of his delay to file an application for certificate on points of law out of time and whether there is illegality demonstrated in the decision to be appealed.

In the first issue, whether the applicant has accounted for days of delay. First and foremost, it must be known that, from the records, my learned sister Opiyo, J on the 14th February 2017 granted the applicant's application for extension of time and was given 14 days within which to file his application for certificate on point of law. The order which was subsequently complied with. However, on several occasions it appears that the applicant's application was once withdrawn and when refiled it was latter on struck out for being an omnibus application. It is on this basis the applicant has laid his defence that his delay constitutes "technical delay" and to butter his defence Mr. Lawena made reference to the case of **Fortunatus Masha (supra)**. On one hand this court supports the applicant's assertion on reasons that in the case cited by the applicant, the Court drew a distinction between real delays and technical delays where the original application was filed on time as ordered by the court but on technical reasons

(application being an omnibus) the application was found to be incompetent and thus struck out which is the case at hand.

However, in the above cited case, the holding did not end on drawing a distinction on real delays and technical delays only, it was further stated that the applicant acted promptly after the delivery of the ruling striking the first appeal. For easy of reference part of the judgment is hereby reproduced as follows;

“In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.”

It has been held in a number of cases that the applicant must satisfy the court that since becoming aware of the fact that, he was out of time, he subsequently acted very expeditiously. See the case of **Royal Insurance Tanzania Ltd vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008. Much as this court approves that the delay was a technical delay however the records reveal that the application was struck out on 16th September 2019 while this application was filed on 29th April 2020 about 226 days after the application was accordingly struck out. As this is an application for extension of time like in any other application of this nature it is a general

rule that, the applicant is expected to account for each day of delay by giving sufficient reason or cause (See the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (Unreported)).

Outwardly, the applicant has not given an account of all the days of delays from when the application was struck out to the time of filing this application. The delay being of about 220 days is so inordinate and the omission to account them justifies this court to hold that, the applicant has failed to give sufficient cause for this court to grant the prayer sought.

In the 2nd issue, I am alive that, an alleged point of illegality is demonstrated can justify the court to exercise its discretion in granting the sought extension of time however in our present application the applicant has, through his affidavit, stated that there are points of law which require determination by the Court of Appeal of Tanzania, the points of law can be gleaned in the intended Memorandum of Appeal that was attached to the application. The applicant alleges that there are two conflicting decisions in Misc. Land appeal No. 4 of 2014 and in PC. Civil Appeal No. 29 of 2007.

This court had time to go through the two judgments that were delivered by my learned sister, **Massengi, J**, and finds that since the two

judgments resolved the matter involving the same subject matter but different parties and there being a question of locus standi, this court is satisfied that there are illegalities which need the intervention by the Court of Appeal of Tanzania as submitted by the applicant's counsel.

In the event, this court finds that, the application is meritorious and is therefore granted. The applicant is given **fourteen (14)** days from the date of delivery of this ruling to file his application for certificate on point of law.

It is so ordered.




M. R. GWAE
JUDGE
28/01/2022