

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY AT ARUSHA
MISC LAND APPLICATION NO.5 OF 2022

(C/f Land Appeal No. 27 of 2019 at the High Court of Tanzania at Arusha, originating from Application No.9 of 2012 at the District Land and Housing Tribunal for Arusha at Arusha.)

JEREMIA MBULUNGA.....APPLICANT

VS

LOOTA NDOIKAI.....1ST RESPONDENT

TAJIRI LOOTA.....2ND REPSONDENT

SANADAMU LOOTA.....3RD RESPONDENT

RULING

Date of last Order: 26-5-2022

Date of Ruling:30-5-2022

B.K.PHILLIP,J

This application is for extension of time for filing an application for leave to appeal to the Court of Tanzania against the decision of this Court in Land Appeal No.27 of 2019. The application is made under Section 11(1) of the appellate Jurisdiction Act, supported by an affidavit sworn by the applicant. The learned Advocate Sylvester Samweli Kahunduka filed a counter affidavit in opposition to the application and appeared for the respondent. The applicant was unrepresented. He appeared in person.

I ordered the application to be argued by way of written submission. The same were filed as ordered.

The major reason advanced by the applicant for delay in filing the application for leave to appeal to the Court of Appeal is that after lodging his notice of intention to appeal against the decision of this Court on 27th October 2021, he fell sick. He was suffering from severe headache and flue. He was treated by using traditional medicine. He recovered from sickness on 22nd December 2021. He managed to secure the copy of the judgment intended to be appealed against and filed this application by electronic filing on 5th January 2022, but he was not able to complete the filing process due to the difficulties he faced in obtaining the control number for payment of the filing fees. Finally he managed to pay the filing fees on 26th January 2022. He contended that the delay in filing the application for leave to appeal is not due negligence or sloppiness on his part but was due to the fact that he was seriously sick.

Moreover, the applicant submitted that this Court has powers to grant the extension of time sought provided that the applicant adduces good reasons for delay. To cement his arguments he cited the case of **Ally Mohamed Mkupa Vs Republic , Criminal Appeal No.93/7 of 2019, (CA) (unreported)**.

In addition to the above, the applicant contended that the intended appeal has high chances of success since the decision intended to be appealed against is tainted with illegalities that need to be addressed by Court of Appeal because the High Court Judge, dealt with issues which were not raised at the Land Tribunal. He implored this Court to grant this application.

In rebuttal , Mr Kahunduka submitted as follows; That the applicant has failed to prove that he was really sick since he has not annexed to his affidavit any medical chit. After the delivery of the decision of this Court the applicant lodged complaints at the District Commissioner's office in Arumeru District. On 16th November 2021 and 30th November 2021 both the applicant and the respondents attended at the District Commissioner 's office where the applicant was informed that if he is dissatisfied with the decision of this Court, he has to appeal against it. The delay in filing the application for leave to appeal is due to the applicant's negligence and this application has been filed as an afterthought. The applicant has failed to account for the days of delay from 22nd October 2021 to 26th January 2022 when he filed this application .

Moreover, he contended that the applicant did not serve the respondent with the notice of appeal alleged to have been filed as required under Rule 84(1) of the Court of Appeal Rules, GN. No. 368 of 2009, thus there is no proper intended appeal before the Court of Appeal for this Court to grant the extension of time sought. To cement his arguments he cited the case of **Grumeti Reserves Limited Vs Morice Akiri, Civil Appeal No. 334 of 2019** (CAT),(unreported).

With regard to the issue of illegality , Mr. Kahunduka submitted that the applicant has not shown any element of illegality in the decision intended to be appealed against . He insisted that for the Court to grant extension of time relying on the ground of illegality,the alleged illegality should be seen on the face of the record. He cited the case of **Hassan**

Abdulhamid Vs Erasto Eliphase , Civil Application No.402 of 2019 (CA) (unreported) in which the Court of Appeal quoted with approval the case of **Lyamuya Construction Compnay Limited Vs Board of Registered Trustees of Young Women’s Christian Association of Tanzania, Civil Application No.2 of 2010** (unreported) in which it was held that the alleged illegality must be on the face of the record.

In rejoinder, the applicant reiterated his submission in chief and insisted that the notice of appeal was served to the respondents but they refused to receive it. The alleged illegality can be seen on the face of the records. He contended that the issue on whether or not the notice of appeal was served to the respondents cannot be dealt with at this stage. This Court has to confine itself to the issue before it, that is , the extension of time sought in this application. He maintained that he has accounted for all days of delay. The days between 22nd of December 2021 and 26th January 2022 were spent in preparation and filing the application.

Having analyzed the submissions made by the parties, let me proceed with the determination of the merit of the application. It is a common ground that this Court has discretionary powers to grant orders for extension of time provided that the applicant adduces good cause for the delay. There are no hard and fast rules on what amounts to good cause , however our Courts have established guiding principles in making determination on whether the reasons adduced by the applicant discloses good cause for the delay. For instance, in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trsutee of**

Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010, (unreported) His Lordship Massati J.A as he then was said the following;

".. As a matter of general principle , it is in the discretion of the Court to grant extension of time .But that discretion is judicial , and so it must be exercised according to the rules of reason and justice , and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated;

- a) The applicant must account for all period of delay.*
- b) 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*
- 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 to be challenged."*

Mr. kahunduka's arguments concerning the service of the notice of appeal to the respondents cannot be determined by this Court. It has to be determined by the Court of Appeal since this Court has no powers to decide on the legality or appropriateness of either the notice of appeal or the intended appeal. Those issues are not within the mandate of this Court. In fact, even the case cited by Mr. Kahunduka to support his contention was decided by the Court of Appeal not this Court. In addition to the above, as correctly submitted by the applicant , the matter before this Court is on the extension of time not the service of the notice

of appeal to the respondents. Dealing with the issue on the service of the notice of appeal will be over stretching the powers of this Court and contravention of the law. In my opinion what this Court is supposed to look at is whether the applicant lodged his notice of appeal. It is not in dispute that the applicant filed his notice of appeal on 27th November 2021.

On the other hand, as correctly submitted by Mr. kahunduka, the applicant has not produced any medical chit to proof that he was sick. However, Mr.Kahunduka's argument that after delivery of the judgment of this Court the applicant lodged complaints at the District Commissioner's office in Arumeru against the respondents and that on 16th November 2022, and 30th November 2022 all parties in this application attended at the District Commissioner's office is unsubstantiated because upon reading the letter from the District Commissioner's office that is annexed to Mr. Kahunduka's Counter affidavit, I noted that the same is addressed to the 1st respondent only and does not contain any information about the dispute between the parties herein. Thus, this Court cannot rely on that letter to rule out that the applicant was not sick and that on 16th November 2021 he attended a meeting at the District Commissioner's office in Arumeru District.

The above aside, the applicant annexed to his affidavit a letter dated 27th October, 2021 written by his advocate, S.J.Lawena, in which he was requesting to be supplied with the copies of the judgment, proceeding and decree for taking further necessary action. That letter was filed in Court on the same date , that is 27th October 2021. Therefore, the applicant's

contention that he started making the follow up of the copy of the judgment on 22nd December 2021 and upon obtaining the same he contacted his advocate is contradictory to the contents of the above mentioned letter which he annexed to his affidavit. It is noteworthy that the applicant's advocate is the one who requested to be supplied with the copy of the judgment. No explanations have been given on what happened after the request for a copy of judgment and proceedings made by the applicant's advocate. I have also noted that the same advocate, Mr. Severin .J Lawena has prepared the pleadings in this application. It is noteworthy that one of the principle of administration of justice is that cases have to come to an end. That is why there are time limits in taking legal actions, otherwise there will be endless litigation at the whims of the parties. [See the case of **Lukanaja Talai Vs Unitrans Tanzania Limite, Revsion No.03 of 2019**, (unreported)] So, with the contradictions I have pointed out herein above, I am not convinced with the reasons adduced by the applicant for delay in filing the application for leave to appeal. Even if it is true that the applicant was sick, the truth is that he had already instructed his advocate , Mr. Severin Lawena to handle the matter. Under the circumstances, I find myself in agreement with Mr. Kahunduka that this application has been filed as an afterthought.

Also, I am in agreement with Mr Kahunduka that the applicant has not managed to explain the alleged illegality in the judgment intended to be appealed against as required by the law.

From the foregoing, it is the finding of this Court that the applicant has not adduced good cause for the delay. In the upshot, this application is hereby dismissed with costs.

Dated this 30th day of May 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over a circular stamp or mark.

B.K.PHILLIP

JUDGE