IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF SHINYANGA)

AT SHINYANGA

MISCELLANEOUS LAND APPLICATION NO. 18 OF 2022

(From Land Appeal no. 32 of 2017, District land and Housing Tribunal of Kahama, original Maluga ward Tribunal land application no. 2 of 2017)

FRANK BUSONGO..... APPLICANT

VERSUS

MARTHA JOSHUA..... RESPONDENT

RULING

Last order on 30/12/2022
Ruling date on 10/1/2023

MASSAM, J

Applicant Frank Busongo made the present application to call upon the court to extend the time for filing an application on certificate certifying that there is a point of law, costs of this application and grant of any other order the court will find just and fit to grant. The application is

made under section 11[1] of the Appellate Jurisdiction Act [Cap 141 R.E 2019]

The application is supported by the applicant's affidavit and was not challenged as the respondent did not file a counter affidavit.

Briefly, the facts heading to this application are as follows; that, the applicant in the Ward Tribunal of Maluga lodged a claim against respondent for encroachment of his plot, and on 19th October 2017 the trial tribunal decided in favor of the respondent, the applicant was aggrieved by the decision thus filed an appeal to the District Land and Housing Tribunal and on 22/3/2019 the said appeal dismissed and the decision of trial tribunal was confirmed. Applicant was not happy and filed an appeal to the High Court and the said appeal was dismissed for want of merit, applicant was aggrieved again and filed application for leave to appeal to the Court of Appeal against the said decision, on 7th October 2021 his prayer was granted he was ordered to file application for certificate on point of law and not application for leave as he prayed, he was given 14 days to do so, but he did not file it on time thus why on 24th April 2022 applicant filed the present application praying for the extension of time.

On the hearing of this application applicant was unpresented to support his application he submitted as follows that after receive his decision from Mdemu J, he was not happy with it as they confirmed the decision from Maluga Ward Land and Housing Tribunal and declare respondent to be the owner of the said land while respondent himself told this court that the said land belonged to his father-in-law and he was not administrator of his estate, thus why he had intention to appeal to the Court of Appeal

I have given careful consideration to the argument for the application herein advanced by the applicant the central issue for determination is **whether the application is meritious**

In determining the application of this kind, the court has to consider whether the applicant has advanced sufficient reasons to convince the court to grant the application sought, what amount to sufficient cause is depends on the circumstances of each and every case, It is settled law that granting the prayer to extend time is within the discretion of the court.

However, this discretion should be exercised judiciously for the court must be guided by the principle as to whether the applicant has advanced

the good cause for the court to consider and along the good cause, the applicant is required to account for each day of delay.This was also said in the case of **Jacob Shija vs M/S Regent Food & Drinks Limited & Another** Civil Application No. 440/08 of 2017, where the Court of Appeal at Mwanza held that;

> *"What amounts to good cause cannot be laid by any hard and fast rules but are dependent upon the facts obtained in each particular case That is, each case will be decided on its own merits, of course taking into consideration the questions, inter alia whether the application for extension of time has been promptly, whether every delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as* well as whether there was diligence on the part of the applicant"

Again, it is the principle of the law that the applicant is duty bound to account for every day of delay, the principle is stated by the court of appeal in **Airtel Tanzania Limited Vs Misterlight Electrical Installation Company Limited & Another**, Civil Application No. 37/01

of 2020 referred with authority to the case **of Bushiri Hassan Vs. Latifa Lukio Mashayo** Civil Application No. 03 of 2007, (unreported) where the Court emphasized that: •

> *Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing the period within which certain steps have to be taken.*

This court had a close look at the applicant's submission nowhere applicants advanced any reasons to convince the court to grant the application sought instead he submitted the reasons why he intends to appeal to the court of appeal, again nowhere he accounted for every day of delay, as per the court record he was granted 14 days to file fresh suit on 7th October 2021 after filed the application of leave instead of an application for certificate on point of law but he filed this application on 28/4/2022 after elapse of 168 days so applicant was required to account for delay of each day.

Basing on the principle above, it is my findings that the applicant did not account for each day of delay this make this court finds that applicant lost interest in this matter because he was silent from 7/10/2021 when the said order was given to 28/4/ 2022 when he came to the court to file this

application. Also he failed to submit concerning his application of extension and submit on his appeal, on his submission he tried to show this court the reason why he is intending to appeal to the Court to appeal while the application before this court is for extension of time to file application on certificate certifying on point, of law so his submission was required to reflect his application before this court and not otherwise as elaborated in the case of **The Registered Trustees of Archdiocese of Dar es salaam vs The Chairman Bunju Village Government and 11 others** civil appeal no 147 of 2006 which held that .....*submissions are not evidence ,submission are generally meant to reflect the general features of a party's case, they are elaboration or explanation on evidence already tendered, they are expected to contain argument on the applicable law, they are not intended to be a substitute for evidence"*

Also, it is the settled law that failure of account each day of delay result the application of extension of time to be dismissed, this is well elaborated in the case of **Juma Shomari Vs Kabwere Mambo** civil application no 330/17 of 2020 CAT DSM in this case it was held that "*it is a settled law that in application for extension of time to do a certain act the*

applicant should account for each day of delay and failure to do so would result in dismissal of the application"

In the final analysis, I find that the applicant has failed to account for each day of delay and show a good cause upon which this Court can exercise its discretion to grant extension of time to file application on certificate certifying that there is a point of law. So according to the foregone reasons, this court finds this application is thus devoid of merit and it is hereby dismissed with costs.

It is so ordered.

DATED at **SHINYANGA** this 10th day of January 2023

R.B.Massam
JUDGE
10/1/2023