

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SONGEA**

AT SONGEA

MISC. CIVIL APPLICATION NO. 8 OF 2023

**THE REGISTERED TRUSTEES OF THE AFRICAN
BENEDICTINE SISTERS OF SAINT AGNES APPLICANT**

VERSUS

ADAMU MWINUKA 1ST RESPONDENT

FLUMES LUGONGO 2ND RESPONDENT

ENIATI LWENA 3RD RESPONDENT

(Arising from the decision of this Court in Land Appeal No. 18 of 2022)

RULING

1st and 19th September, 2023

KISANYA, J.:

The respondents herein, filed an appeal to challenge the decision of the District Land and Housing Tribunal for Songea at Songea (the DLHT) in Land Application No. 17 of 2015 which declared the applicant as the lawful owner of a land described as Plot No. 190, with Title No. 13402 MBYLR, L.O. No 176695, Magagura, Songea District. Further to this, the respondents were, among others, declared as trespassers to the said suit land.

In its judgment handed down on 6th April, 2023, this Court (Madeha, J) nullified the proceedings of the DLHT and the judgment arising thereto, for non-joinder of the Attorney General. In lieu thereof, this Court directed any interested party to institute a fresh suit and join Magagura Village, Songea District Council and the Attorney General.

Few days later, on 14th April, 2023, the applicant wrote a letter requesting for copies of the judgment, decree and all necessary documents in order to prepare her appeal. It turned out that the applicant's letter was not worked upon. On 11th May, 2023, she wrote a reminder letter; and finally, the copies of the judgment and decree were furnished to her on 25th May, 2023.

Upon noticing that the time within which to apply for leave to appeal had already expired, the applicant filed this application for extension of time, on 31st May, 2023. It is made under section 11(1) of the Appellate Jurisdiction Act, Cap. 141, R.E. 2019 (the AJA) and section 14(1) of the Law of Limitation Act, Cap. 89, R.E. 2019. Supporting the application is an affidavit sworn by the applicant's authorized officer namely, Sr. Asante Goliama.

At the hearing of this matter, Mr. Makame Sengo, learned advocate appeared for the applicant, while the respondents failed to appear. Having considering the affidavit of service which shows that the respondents refused receipt of summons, this Court ordered for the matter to proceed in the absence of the respondents.

Mr. Sengo adopted the facts deposed in the supporting affidavit to form part of his submission. He urged this Court to consider that the applicant was supplied with the copies of judgment and decree at the time when the time within which to apply for leave to appeal had lapsed and that, this application was filed five days after receipt of the said copies. He further argued that an application of this nature is granted where there is good cause. The learned counsel further referred this Court to the case of **Hamisi Mohamed (administrator of The Estates of The Late Risasi Ngawe) vs Mtumwa Moshi (administratrix of The Late Moshi Abdallah)**, Civil Application 407/17 of 2019, [2020] TZCA 13 (TanzLII), where it was emphasized that factors taken into account in considering whether good cause has been shown include, whether all the period for delay has been accounted for, length of delay, whether the applicant was diligence and not negligent, and whether there is ground of illegality.

In the light of the foregoing, Mr. Sengo was firm that delay to be supplied with the copies of judgment and decree is sufficient cause. He thus, asked this Court to grant the application.

After a careful consideration of the submissions of the learned counsel for the applicant, the crucial issue for determination is whether the application has merits.

Pursuant section 11(1) of the AJA, this Court has discretion to extend time for filing an application for leave to appeal, notwithstanding that the time for filing the application has already expired. Although the said provision does not state the factors to be taken into account in determining application of this nature, it is a cherished position of law that, the applicant must establish good or sufficient cause for the delay.

In the case of **Hamisi Mohamed (administrator of The Estates of The Late Risasi Ngawe)** (*supra*), referred to this Court by Mr. Sengo, the Court of Appeal held that good cause may be determined by taking into account the following factors stated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported):

- (a) The applicant must account for all the period for delay;*
- (b) The 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; and*
- (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 sought to be challenged.*

It is instructive to note that, Rule 45(a) of the Court of Appeal Rules, 2019 [R.E. 2019] requires the application for leave to appeal to the Court of Appeal to be filed within thirty (30) days from the decision against which it is desired to appeal. Since the judgment intended to be challenged was delivered on 6th April, 2023, the time within which to file an application for leave to appeal expired on 6th May, 2023. The question is whether the applicant has shown good cause for the delay from 6th May, 2023 when the time within which to apply for leave lapsed to 31st May, 2023 when the present application was lodged.

I have considered that, ten days after the date of judgment against which it is desired to appeal, the applicant requested for copies

of judgment, decree and proceedings and in order to appeal to the Court of Appeal. The record bears it out that despite the applicant's reminder for the copies of the judgment, decree and proceedings, it was on 25th May, 2023 when she was supplied with the said documents. Thereafter, the applicant lodged this application on 31st May, 2023. That was five days from the date of receiving the copies of judgment and decree.

I have further considered that, in the case of **Paul Alphonse Munisi vs Elisante Wilbard Kirita**, Misc. Civil Application No. 253 of 2022, [2023] TZHC 15630 (17 February 2023), this Court (Kakolaki, J) held that a copy of decision against which it is desired to appeal should be appended to the application for leave. Further to this, it is trite law that, in order the application for leave to appeal to be granted, the applicant must establish a triable issue or arguable ground in the intended appeal. Therefore, even if it is assumed that there is no legal requirement of attaching the copy of the impugned decision to an application of this nature, I am of the humble opinion that, one may be in a position of detecting an arguable ground and deposing the same in his or her affidavit, after being supplied with the copies of judgment. In that regard, the delay to obtain the copies of judgment may be

considered as good cause for extension of time within which to apply for leave to appeal.

Now that the applicant was supplied with the copies of judgment and decree at the time when the time within which to apply for leave has already lapsed, I am of the humble view that the discretion of the Court in section 11(1) of the AJA can be exercised by granting the application. This is also when it considered that the applicant lodged this application five days after receiving the copies of the said documents.

In the upshot of the above, the applicant is granted extension of time to file an application for leave to appeal to the Court of Appeal. It ordered that the intended application should be lodged within thirty (30) days from the date hereof. Given the circumstances of this matter, each party is ordered to bear its costs.

DATED at SONGEA this 19th day of September, 2023.



S.E. KISANYA
JUDGE
19/09/2023

Ruling delivered this 19th day of September, 2023 in the presence of Mr. Makame Sengo, learned advocate for the applicant, and the respondents.



S.E. KISANYA
JUDGE
19/09/2023