

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPLICATION NO. 453 OF 2023

(Originating from Misc. Land Application No. 554 of 2019 Land Division)

JOSEPHINE MICHAEL ZAMBO..... APPLICANT

VERSUS

**FARIDA BERNARD CHIFUNDA (Administratrix of the Estate of the Late
Bernard William Chifunda)RESPONDENT**

RULING

19/09/2023 to 22/09/2023

E.B. LUVANDA, J

In this application, the Applicant named above is seeking extension of time within which to file out of time the notice of appeal and an application for leave to appeal to the Court of Appeal against the decision of this Court dated 09/06/2020 in Misc. Land Application No. 554/2019 where this Court refused to extend time for the Applicant to apply to set aside the *ex parte* judgment of this Court decreed against the Applicant on 24/10/2017 in Land Case No. 279/2014.

The main ground of delay, is that she was honestly pursuing an appeal that is Civil Appeal No. 384/2020 which alleged was filed within time at the Court of Appeal, which was withdrawn on 12/07/2023 for want of leave to appeal.

The Respondent opposed the Application for reasons that it is an abuse of process, frivolous, vexatious, without merit and delaying tactics to prevent the Respondent to enjoy the fruits of her decree. However, the Respondent did not contest a fact that Civil Appeal No. 384/2020 was instituted within time and was withdrawn, to pave way for the Applicant to seek and obtain leave into this Court.

Mr. Nafikile Elly Mwamboma learned Counsel for Applicant submitted that a ground of technical delay covers the period of time when the Applicant was pursuing an appeal before the Court of Appeal between 09/06/2020 to 12/07/2023. He argued that technical delay constitutes good cause for extension of time. He cited the case of **Fortunatus Masha vs. William Shija**, [1997] TLR 154; **Elly Peter Sanya vs. Ester Nelson**, Civil Appeal No. 151/2018 CAT.

In reply, Mr. M.R. Kiondo learned Counsel for Respondent submitted that the Applicant ought to account on each day of delay a period of more than 700 days from when the impugned ruling was delivered on 09/06/2020. He cited **Erica Herman and Another vs. Magdalena Herman Muna Gidadi (Legal Representative of the Muna Gidadi)**, Civil Application No. 130/02 of 2019. He submitted that they negligently filed Civil Appeal No. 384/2020 to the Court of Appeal of Tanzania without leave and was withdrawn with no

leave to refile, arguing the intended appeal to be **resjudicata** and abuse of judicial process.

On my part, I go along the argument of the learned Counsel for Applicant that this application is backed by technical delay covering the entire period when the Applicant initiated the process of appeal and thereafter pursuing Civil Appeal No. 384/2020 which was eventually withdrawn on 12/07/2023. In so far Civil Appeal No. 384/2020 was in time, it cannot be said that the Applicant was under obligation to account for each day of delay.

In the case of **Elly Sanya** (supra) it was held, I quote,

"It is now settled that the delay in taking action within the time specified by the law caused by time spent in prosecuting a matter in court constitutes good cause of delay. This is what is known in legal arena as technical delay".

Therefore, the Applicant is granted an extension of time of fourteen days to present his notice of appeal and an application for leave to appeal against the decision of this Court dated 09/06/2020. The fourteen days will start running from the date hereof.

The application is granted. No order for costs.

E. B. LUVANDA
JUDGE
22/09/2023

Ruling delivered in the presence of Mr. Felix Mutaki learned Counsel for the Applicant and the Respondent.

E. B. LUVANDA
JUDGE
22/09/2023

