

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 351 OF 2023**

*(Arising from the decision of the High Court Land Division in Misc. Land Appeal No. 60 of 2020 – Hon. A. Msafiri, J)*

**JUMA RAMADHANI NJIKU ..... APPLICANT**

**VERSUS**

**IBRAHIM SHABANI ..... RESPONDENT**

*Date of Last order 14/09/2023*

*Date of the Ruling 26/09/2023*

**RULING**

**A. MSAFIRI, J.**

This is an Application for extension of time within which the applicant can file an Application for certificate on point of law for the purpose of filing an appeal to the Court of Appeal against the decision of this Court delivered on 03.12.2021.

The Application was made under Section 11(1) of the Appellate Jurisdiction Act, Cap 141 [R.E. 2019]. The same was by way of chamber summons supported with an affidavit of the applicant. It was contested by the respondent who also filed his counter affidavit deponed by him.

*Alle.*

The disposal of the Application was made orally and both parties were unrepresented as they appeared in persons.

The applicant was the first to kick the ball rolling, he prayed to adopt the contents of his affidavit and submitted that, the origin of this Application is Land Appeal No. 60 of 2020 delivered by this Court on 03.12.2021. That, he was not satisfied with the decision of this Court hence he lodged a Notice of Intention to Appeal on 29.12.2021.

The applicant stated that he is aware of the law that requires him to obtain certificate on point of law to pursue his rights to appeal in the Court of Appeal as the dispute originated from the Ward Tribunal. That, he initially filed Misc. Land Application No. 09 of 2022 for certificate on the point of law in this Court before Hon. Mwenegoha, J which encountered the preliminary objection from the respondent that the applicant's affidavit was defective. That the respondent failed to argue his preliminary objection but the Court decided that it will determine the raised objection *suo motu*.

The applicant averred that, following the decision of the Court to determine the objection *suo motu*, he was scared that his Application will be struck out or being dismissed, as a result, he opted to withdraw the Application in question and it was marked withdrawn with leave to refile

*Alle*

before Hon. Mwenegoha, J. The applicant claimed that, however, the Hon. Judge did not record the order of leave to refile.

The applicant submitted further that after that, he filed Application No. 604 of 2022, and that the same was struck out by Hon. Masoud, J. (as he then was) for being incompetent on the ground that there was a wrong citation of the law. That after that, he has filed this present Application and he prayed this Court be pleased to grant it so that he can pursue his right in the Court of Appeal as there is a great chance of success.

In response, the respondent contended that the applicant has not advanced any sufficient reason to be granted extension of time. He said that, Application No. 09 of 2021 was marked withdrawn at the request of the applicant and he did not make a prayer for leave to refile. That, it is wrong for the Applicant to state that the Hon. Judge did not record order of leave to refile while the applicant did not pray for such leave before the Court. He contended that the applicant has advanced no sufficient reasons to warrant this Court to grant the extension of time, therefore he prayed that this Application be dismissed with costs.

In rejoinder, the applicant reiterated his submission in chief and stated that he requested to withdraw Misc. Land Application No. 09 of

*Alle*

2022 because was scared that the Hon. Judge would dismiss his Application and that could have been the end of his rights.

I have gone through the rival submissions of the parties, and I find the issue for determination is whether the applicant has advanced sufficient reasons to be granted the extension of time to file certificate on point of law. It is a cardinal principle that it is the Court's discretion to grant the extension of time but any person seeking to be granted extension of time should advance or give sufficient reasons in order to convince this Court to exercise its discretion.

There are numerous cases in our jurisdiction which has emphasized that cardinal principle. Among them is the case of **Omary Shabani Nyambu vs. Dodoma Water and Sewerage Authority**, Civil Application No. 146 of 2016 (unreported) where it was held that;

*"...it is significant to emphasize that the court's discretion in deciding whether or not to extend time must be exercised judiciously and not arbitrarily or capriciously, nor should it be exercised on the basis of sentiments or sympathy. Fundamentally, the said discretion must aim at avoiding injustice or hardships resulting from accidental inadvertence or excusable mistake or error, but should not be designed at assisting a person who may have deliberately sought it in order to evade or otherwise to obstruct the cause of justice- see **SHAH V MBOGO AND ANOTHER** (1967)*

*Alls.*

*E.A 116"*

Also in the case of **Benedict Mumello vs. Bank of Tanzania, Civil Appeal No 12 of 2012**, the Court of Appeal said as hereunder:

*"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

In this Application, both parties were laymen and were unrepresented. Although the applicant in his capacity has not managed to advance reasons for delay nor account for each day of delay, it is my belief that he has shown that he has not sat and relaxed since his Land Appeal No. 60 of 2020 was dismissed in this Court on 03<sup>rd</sup> December 2020.

The applicant has tirelessly pursued his right by trying to file several Applications before this Court, whereby the same encountered legal barriers. The Applications were Misc. Land Application No. 09 of 2022 which was withdrawn at the request of the applicant himself for fearing of the same to be dismissed, in other words we can call it (fear of the unknown) and Misc. Land Application No. 604 of 2022 which was struck out for wrong citation of the law.

*Alle*



In my view, I consider these attempts by the applicant to pursue his rights but in wrong directions, the genuine reasons for delay because as the results of the applications being withdrawn and or being struck out, time was not in favour of the applicant's side. Taking into consideration that the applicant is a lay person who at all the time has been appearing in person, I find that the circumstances necessitate me to invoke the principle of overriding objection and focus on the dispensation of justice which I hereby do so.

Therefore, since the grant of extension of time is the court's discretion to grant or refuse as stated in the case of **Benedict Mumello** (Supra), I consider the attempt of the applicant in filing the two Applications, which both were unsuccessful on technical grounds, to be a reason for delay and on that ground, I grant the Application. The applicant should file the intended Application to file Certificate on point of law within 21 days from the date of this Ruling.

The Application is hereby granted with no order as to the costs.

It is so ordered.

  
**A. MSAFIRI**  
**JUDGE**

**26/09/2023**

