

TANZANIA / JUDGMENT

HAMISI RAMADHANI NKWASA

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IN THE HIGH COURT OF TANZANIA DODOMA SUB-REGISTRY AT DODOMA MISC. LAND APPLICATION NO. 10520 OF 2024 (Arising from Mise. Land Appeal No. 08 of 2022 before this Court; and Land Appeal No. 49 of 2021 in the District Land and Housing Tribunal at Kondoa; Originating from Land case No. 4 of 2021 in Changaa Ward Tribunal) HAMISI RAMADHAN NKWASA..... APPLICANT VERSUS HALIFA NAHATO MAJALI.....RESPONDENT

RULING

13th November & 31st December, 2024 MUSOKWA, J. The applicant herein seeks for extension of time in order to file an application for certificate on points of law so as to test if it is a fit case for appeal to the Court of Appeal of Tanzania (CAT). The enabling provision of the instant application is section 11 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (AJA). An affidavit deposed by the applicant herein has also been filed in support of the application. Briefly, it was in 2021 when the applicant filed Land case No. 4 of 2021 before the Changaa Ward Tribunal (trial tribunal) against the respondent. By the judgement dated 23rd August 2021, the trial tribunal delivered the judgment in favour of the applicant. Being aggrieved by the decision of the trial tribunal, the respondent successfully appealed to the District Land and Housing Tribunal (DLHT) through Land Appeal No. 49 of 2021. The applicant, dissatisfied with the judgment of the DLHT dated 27th January 2022, unsuccessfully appealed to this court through Mise. Land Appeal No. 8 of

2022. By the judgment dated 27th June 2023, this court (Hon. Khalfan J.) dismissed the appeal and upheld the decision of the DLHT. When the matter came for hearing on 13th November 2024, the applicant was represented by Mr. Erick Christopher learned counsel. The respondent appeared in person and defended for himself. Submitting in support of the application, Mr. Christopher prayed to adopt the accompanying affidavit to form part of his submissions. Proceeding with his submission, the applicant's counsel asserted that failure to receive copies of the judgment and decree of Mise. Land Appeal No. 8 of 2022 timely, contributed to the delay in lodging the application for certificate on points of law within the statutory period. This is reflected under paragraph 4 of the supporting affidavit. Mr. Christopher further referred this court to paragraphs 5, 6 and 7 of the affidavit in support of the application. The applicant stated that on 9th August 2023, he lodged an application for extension of time, in order to file an application for leave and certificate on points of

law. At the time, the requirement to seek leave of this court before lodging an appeal to the CAT was still operative. However, as deponed under paragraph 8 of the affidavit, the aforementioned application was withdrawn with leave to re-file. This was due to the changes in law whereby the requirement to seek leave of this court before lodging an appeal to the CAT had been dispensed with. In essence, the delay covers a period of 277 days beyond the prescribed period. The sum of these days is an aggregate of the days indicated under paragraphs 9 and 11 of the affidavit. These days include the date when the copies of the judgment and decree of Mise. Land Appeal No. 8 of 2022, were received, therefore on 27th July 2023; up to when the present application was filed before this court online on 29th April, 2024. Concluding his submission, the applicant prayed that this court should consider the instant application favorably, and accordingly to grant the prayers therein. The respondent in reply thereto, merely prayed to adopt his counter- affidavit. In rejoining, the applicant prayed to adopt his submissions in chief. 3 Having considered the records and the submissions by the parties, this court is called upon to determine whether there exists good cause, to warrant the grant of extension of time. The law is clear, that for an application for extension of time to be granted, the applicant must not only advance good cause for the delay, but has a further duty to account for each day of delay. To begin with, the enabling section 11 (1) of AJA reads as hereunder: - "11(1) Subject to subsection (2), the High Court or where an appeal Ues from a subordinate court exercising extended powers, the subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgement of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired." [emphasis added] In ascertaining whether sufficient cause has been established, the peculiar circumstances of each case must be considered. In the case of Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported), the CAT set key conditions on which sufficient or good cause may be gauged. These conditions are as follows: - 4

1. The applicant must account for all the period of delay.
2. The delay should not be inordinate.
3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.
4. If the court feels that there are sufficient reasons such as existence of a point of law of sufficient importance such as illegality of the decision ought to be challenged. In the application at hand, the circumstances leading to the delay are articulated under paragraphs 9,11 and 13 of the applicant's affidavit in support of this application. For ease of reference, the contents of the said paragraphs are reproduced hereinafter: -

9. That, the applicant herein was late for about 13 days for filing the recent withdrawn application since he was /ate to be supplied with a copy of judgment and decree on appeal despite making physical follow-ups on the same while the other time were spent for preparing the said withdrawn application.
11. That, the applicant herein was further late for about 264 days covering days spent in the prosecuting the withdrawn application, time spent to wait for the copy of the drawn order as well as preparing the current application for extension of time.
13. That, nevertheless this court when determining the said Mise. Land Appeal No. 8 of 2022 failed to clearly re- evaluate the evidence tendered during the trial, thus there was misapprehension of the evidence, thus the intended appeal has high chances of success, [emphasis added] 5 Certainly, apart from providing a general narration of the events that transpired since the impugned decision and the extent of delay; the applicant failed to account for each day of delay in accordance with the requirement of the law. Ordinarily, the 13 days and 264 days delayed, as indicated under paragraphs 9 and 11 of the supporting affidavit ought to be accounted one by one. This is also the position of the respondent as stated under paragraph 4 and 6 of his counter affidavit. Thus, the general and evasive explanation given by the applicant is not sufficient in law. The CAT case of Elius Mwakalinga vs Domina Kagaruka and 5 others, Civil Application No. 120/17 of 2018 (unreported) held that: - "...a delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken " [emphasis added] Similarly, the requirement of the applicant to account for each day of delay was stressed in the case of Bushiri Hassan vs Latifa Lukio Mashayo, Civil Application No. 2 of 2007, Crispin Juma Juma Mkude vs Republic, Criminal Appeal No. 34 of 2012, Sebastian Ndaula vs Grace Rwamafa (Legal Representative of Joshwa Rwamafa), Civil 6 Application No. 4 of 2014 (all unreported). It is unfortunate, that the applicant failed to do so, which was, obviously, to his detriment. Equally important, under paragraph 13 of the applicant's affidavit, it is stated that "the intended appeal has high chances of success" due to misapprehension of the evidence by this court. However, it is important to note that the likelihood of success of an intended appeal, is no longer a requirement or ground in an application of this nature. The reason is simple, in that, at this stage, this court cannot deliberate or consider matters related to the competence, merits or otherwise of the intended application for certification on point of law. In the case of Airtel Tanzania Limited vs KMJ Telecommunications Limited, Civil Application No. 393/16 of 2021 (unreported), CAT stated that: - "... for more clarity, it is no wonder that whether "an appeal stands chances of success" is no longer a requirement and ground for granting an extension of time to appeal or, as here, leave to appeal. See- Murtaza Mohamend Raza Viran v. Mehboob Hassanali Versi, Civil Application No. 168 of 2014 and Victoria Real Estate Development Limited v. Tanzania Investment Bank and 3 others, Civil Application No. 225 of 2014 (both unreported)", [emphasis added] 7 In conclusion, I am of the settled view that the applicant has failed to advance good or sufficient cause upon which this court can exercise its discretion to grant the extension of time sought. The application is therefore devoid of merits and accordingly,

it is hereby dismissed with costs. It is so ordered. Ruling delivered in the presence of Mr. Erick Christopher, learned counsel for the applicant; and in the presence of the respondent.

8

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