

TANZANIA / JUDGMENT

jamanest mboya vs swaiba mahmoud

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM CIVIL APPLICATION NO. 521/17 OF 2021 JAMANEST MBOYA APPLICANT VERSUS SWAIBA MAHMOUD..... RESPONDENT LATIFA MAHMOUD 2nd RESPONDENT (Application for extension of time to serve the respondents a copy of the letter requesting for certified copy of the proceedings of the High Court of Tanzania, (Land Division) at Dar es Salaam) (Maige. 3.) dated the 6th day of August, 2021 in Land Appeal No. 148 of 2019 RULING OF THE COURT 30th May, 2023 & 30th January, 2024 MASHAKA. J.A.: In this application, the applicant is seeking an order to extend time within which to serve the respondents with a letter requesting for the copy of the proceedings and judgment in the High Court (Land Division) in Land Appeal No. 148 of 2019. The said letter is dated 6th August

2021. The application was made by way of a notice of motion under rule 10 of the Tanzania Court of Appeal Rules, 2009 (hereinafter the Rules) supported by affidavit deposed by the applicant. The respondents, i Swaiba Mahmoud and Latifa Mahmoud resisted the application by filing affidavit in reply. The genesis of the application can be gathered at paragraphs 10 - 14 of supporting affidavit that: - "10. On 6thAugust 2021 my former advocate, Mr. Sigano M. Mtoni wrote and lodged a letter with the Deputy Registrar of the High Court, Land Division requesting to be supplied with the certified copy of the proceedings In respect of the Land Appeal No. 148 of 2019.
11. In a due process of preparing the record of appeal my current advocate discovered that the said letter was not served to the Respondents herein on their advocate.
 12. Upon being informed of that anomaly by my current advocat ef I asked Mr. Sigano M. Mtoni my former advocate what happened.
 13. Upon asking Mr. Sigano M. Mtoni as to why the said letter was not served to the , respondents herein he told me that he did not make it as he was hospitalized at MHS - Massana Hospital from 14 hAugust, 2021 to the 19 hAugust, 2021 for viral pneumonia.

14. I was informed further by Mr. Sigano M. Mtoni that he was discharged under self - isolation at home for 7 days to improve his health status " The respondents averred that there is no affidavit of the person mentioned in support of the deponed facts and that the applicant failed to account for each day of delay. Having gone through the notice of motion, affidavit, affidavit in reply and the submissions for and against the application, the issue for determination is whether the applicant has demonstrated sufficient cause for the Court to extend the time to serve the respondents with the letter requesting for the certified copies of proceedings and judgment. The application is grounded under rule 10 of the Rules which provides: - "The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal\ for the doing of any act authorized or required by these Rules, whether before or alter the expiration of that time and whether before or alter the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended." 3 On the strength of the above provision, an extension of time is purely discretionary and judicially exercised by the Court. In *Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010, (unreported), the Court reiterated the following benchmarks have to be taken into account in granting extension of time: - n(a) The applicant must account for all the period of 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,
- (d) I f the court feels that there are other sufficient reasons, such as the existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged." Additionally, it is settled law that the applicant must disclose the reason for the delay and account for each day of delay - See *Yusuf Same and Hawa Dada vs. Hadija Yusuf*, Civil Application No. 1 of 2002(unreported). In the present application, the applicant averred that his advocate Mr. Sigano who had the responsibility to serve the respondents was admitted at the MHS - Massana Hospital from 14th August 2021 to 19th August 2021 and later he was in self-isolation. Having gone through the record, counting days from when Mr. Sigano completed the 7 days of self - isolation which was on 26th August, 2021 until when the present application was lodged on 26th October, 2021 almost 60 days had lapsed. The applicant has failed to furnish any account for each day of delay. In such circumstances, I find the applicant has failed to account for each day of delay and sixty days is inordinate delay. The application is unmerited and dismissed. DATED at DAR ES SALAAM this 29th day of January, 2024. L. L. MASHAKA JUSTICE OF APPEAL Ruling delivered this 30th day of January, 2024 in the presence of the Applicant together with Mr. Helmes Marcell Mutatina, learned counsel for the Applicant and Mr. Emmanuel Dominic Hayuka, learned ResP°ndents is hereby certified as a true copy of the — - A. L. KALEGEYA DEPUTY REGISTRAR COURT OF APPEAL

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Prepared on 14 October 2026 · Esheria