

TANZANIA / JUDGMENT

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA SUB - REGISTRY AT MBEYA MISC. LAND APPLICATION NO. 17979 OF 2024 (Originating from Land Appeal No. 38 of 2022 in the District Land and Housing Tribunal for Songwe at Mbozi, Originating from Land Application No. 2 of 2018 Mlowo Ward Tribunal) MILTAN ASILIA (The administrator of the late MARITHA MSABAHA

NSALAMBA..... APPLICANT VERSUS NELSON

NSALAMBA.....1st RESPONDENT DONARD

ASILIA.....2nd RESPONDENT

RULING

Date: 1 November 2024 & 29 November 2024 SINDA, J.: The applicant is seeking extension of time within which to file an appeal out of time. The application was brought under Section 38(1) of the Land Disputes Courts Act [CAP 216 R E 2019] (the LDCA) praying for this Honourable Court be pleased to grant leave for the applicant file an 1 appeal out of time and costs of this application. The application was accompanied by the affidavit of the applicant. At the hearing, the applicant was represented by advocate Moses Mwampashe while the first respondent appeared in person. The application was argued by way of written submission. The applicant submitted that he was applying for extension of time because he did not get the copies of judgment and proceedings in time for him to file a sound and well-focused grounds of appeal as reflected in the court record. He referred to the case of Mary Kimaro v Khalphan [1995] TLR 202. The second reason is that, believing that he was still on time by the cover of automatic exclusion of time spend waiting for collection of copies of judgment. He filed his appeal on 3 November 2023, and later realized that it was not properly before the court for being time barred. Therefore, he prayed to withdraw the appeal and to follow the procedures. The prayer which was granted by the court. He referred the case of Okech Boaz Othiambo & Another vs. Salama Idi Kanyorota, Civil application no. 900/15 of 2021, Court of Appeal of Tanzania at Zanzibar (unreported) at page 7 and 8. 2 He stated that the withdrawal of the appeal aimed for the applicant to get a chance to follow the procedure so as to secure his right. Therefore should not be taken as negligence but a technical delay. The third reason is that, the impugned decision is tainted with serious illegalities. These illegalities are divided in three areas. Firstly, is that the impugned decision denies the applicant's right to be heard as an administrator of the estate for the suit land which belonged to his late mother one Maritha Msabaha. The trial tribunal declared the first respondent the owner

of the suit land without giving a chance to the applicant to be heard. He referred the case of Petro Robert Myavilwa vs. Abel Nwalibeti & 4 Others, Civil Application no. 640/06 of 2021 Court of Appeal of Tanzania at Mbeya (unreported) the court held that the right to be heard is so basic that a decision which is arrived at in violation of it will be nullified. He argued that in this matter the impugned decision can only be nullified if this honourable court extend time for the applicant to file an appeal out of time. Secondly is that the trial tribunal had no jurisdiction to entertain the matter as the second respondent had no locus standi to be sued in the deceased landed property as he was not an administrator of the deceased estate. He referred to the case of Martin Itambu vs 3 Shabani Dedu, Civil Appeal No. 513 of 2021 Court of Appeal of Tanzania (unreported) and the case of Omary Yusuphu vs Albert Munuo, Civil Appeal No. 12 Of 2018, Court of Appeal of Tanzania at Dar-Es-Salaam (unreported). Thirdly, the trial tribunal had no proper composition of quorum during the hearing of the impugned decision. The law requires proper composition of ward tribunal must indicate names, gender and signature of each member, among them three must be women. The Secretary of the tribunal is not among the members of the ward tribunals. This is as per the position in the case of Kassimu Ngoroka vs Bernard Masembula, Misc. land appeal no. 3 of 2016, High Court of Tanzania at Mbeya at page 3. He submitted that the principle of law is that once the issue of illegality in the decision sought to be challenged is raised, that amount to good cause and the court, even if the everyday of delay is not accounted for, would grant extension sought so as to rectify the illegality on appeal. He referred the case of Mohamed Salum Nahd vs Elizabeth Jeremiah, civil reference no. 14 of 2017, Court of Appeal of Tanzania at Dare salaam (unreported) from page 7 to 8. He insisted this court to grant application on the above grounds. 4 In reply, the first respondent submitted that going through the applicants' written submission, noticed some legal discrepancies which he wishes to call for attention of this Honourable court to wit; first that the applicant contravenes Order XXIII Rule 1(3) of the Civil Procedure Code, Cap 33, R.E 2019, secondly that the application is frivolous for multiplicity of applications and last that the applicant has no locus to claim over any right in this suit for want of Letters of Administration of the Estate of the late MARITHA MSABAHA NSALAMBA. With Regard to the first discrepancy, he argued that the applicant contravenes Order XXIII Rule 1(3) of the Civil Procedure Code Cap 33 R.E 2019. That, before lodging the instant Application, the applicant had filed Misc Land Appeal No. 4976 of 2023 before this court. When the appeal come for hearing, the applicant prayed for withdraw. The High Court marked the appeal withdrawn with no order for leave to refile. He submitted that based on that order, the applicant herein precluded from filing a fresh appeal. Hence granting this application would be abused court process. He referred to the case of Equity for Tanzania Limited (Efta) vs Salimu Kasim Msangi Civil Appeal No. 21 of 2022 at Tanga. 5 On the second discrepancy that the application is frivolous for multiplicity of applications. He argued that it is the stance of the law that litigation should come to an end. The spirit beyond this principle is to make sure that there are no multiplicity of litigation and people or individual should enjoy their right without delay this is also cemented by principle of justice delayed is justice denied. He argued that this application is continuation of multiplicity of frivolous litigation initiated by the applicant to delay justice to the first respondent. He argued that this application be dismissed for being frivolous. On the last discrepancy raised by the first respondent that the applicant has no locus to claim over any right in this suit for want

of Letters of Administration of Estate of the late MARITHA MSABAHA NSALAMBA. The first respondent vehemently avers that the applicant has made this application as an administrator of late Maritha Msabaha Nsalamba estate however neither in the affidavit nor in the all attached proceeding the applicant has annexed the letters from the Court with competent jurisdiction appointing him as administrator. Thus, he lacks legal capacity to stand in this application. In addition, on the first reason adduced by the applicant to the effect that he was not supplied by copies of judgement and Proceeding, the 6 first respondent adamantly averse that appeals from the District Land And Housing Tribunal are guided by the provision of Section 38(1) and

- (2) of Land Dispute Courts Act, Cap 216, R.E 2019. he added that the provisions are very clear and there is no requirement for attaching judgement nor proceeding. He argued further that even if that could be the case the applicant herein was supplied with copies of judgement on 10 October 2023 however, he decided to pursue an appeal on 3 November 2023 delaying for 25 days. Further after the applicant withdraw the Misc Land Appeal No. 4976 of 2023 on 10 July 2024, he filed this application on 22 July 2024 delaying for about 12 days, this marks the delay of about 37 days which lacks explanation. He referred to the case of Dar es salaam City Council vs Security Co Ltd, Civil Application no 234 of 2015 CAT at Dar es salaam. On the second ground, the first respondent Vehemently avers that the Misc Land Appeal No. 4976 of 2023 was withdrawn due to lapse of time indicating negligence on the part of the counsel. That, he was required to act with due diligence before instituting the appeal. As such, he cannot pray mercy of this court. 7 The applicant on the third ground that the decision is tainted with illegality that the applicant herein was not provided with the right to be heard in the Revision No. 38 of 2022. He argued that this argument is devoid on merit. He added that the applicant herein is the one who instituted the case which was heard on merit. The argument that he was not heard is devoid of merit. He further argued that the ward tribunal lacked jurisdiction since the suit was instituted against the second respondent who was not the Administrator of Estate of the late MARITHA MSABAHA NSALAMBA. It is the argument of the first respondent that this ground is devoid because at the ward tribunal the case was instituted claiming the property which did not belong to the late MARITHA MSABAHA NSALAMBA. Lastly, the applicant availed that the ward tribunal when entertaining the matter lacked jurisdiction for want of proper composition. He submitted that this argument is devoid of merit and taken by event. Further, the first respondent avail that the ward tribunal was properly composed in accordance with the provision of section 4(3) of the Ward Tribunal Act Cap 206 R.E 2021 read together with the provision of section 11 of the Land Dispute Courts Act, Cap 216, R.E 2019. That, this is well stipulated in the proceeding attached by the applicant. Hence, this ground is also 8 devoid of merit. He prayed that this application be dismissed with costs by this honourable court. I have gone through court records and submission filed by parties. On the legal discrepancies raised by the respondent claiming that its need for attention of this Honourable court, I find the same was raised premature at this stage. It is my opinion that the first respondent is suppose to raise the same on appeal stage. Going to the merit of the application, the issue is whether the applicant has advanced sufficient cause for delay to file his appeal. What amounts to

sufficient or reasonable cause is yet to be defined. However, number of factors have to be taken into account to conclude that there is sufficient or reasonable cause for the delay. This was stated in the case of *Yusuph Same and Another vs. Hadija Yusuph*, Civil Appeal No. 1 of 2002 (CAT) the court stated that “... what amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant, does not amount to sufficient cause. In this application on the first and second reason the applicant stated that he applied for copies of judgment and proceedings. He obtained the 9 said copies on 10 October 2023. Believing that he was still on time by the cover of automatic exclusion of time spend waiting for collection of the copies of judgment, filed his appeal on 3 November 2023. The appeal which he later realized that it was not properly before the court for being time barred. Therefore, he prayed to withdraw the appeal so that to follow the procedure and the prayer was granted. In the case of *Okech Boaz Othiambo & Another vs Salama Idi Kanyorota* (Supra) at page 7-8 the court stated that “...I don’t share the view that if any application is withdrawn on some legal shortcomings, that should be branded as negligence on the counsel for the applicant which is not excusable. We are not angels. We are human beings and make mistake we made deliberately with view of getting some advantage out of it. I don’t see such situation here but is technical delay.” In this case, I find that the applicant was first confused on the procedure of appeal on the decision of district land and housing tribunal on its original jurisdiction and the decision of district land and housing tribunal on appellate jurisdiction from the decision of the ward tribunal. Counting from 10 October 2023 when the judgment from district land and housing tribunal was certified to 3 November 2023 when the withdrawn appeal was filed is 24 days which was with 45 day of filing appeal from district land and housing tribunal in its original jurisdiction. 10 In the line of the above authority, it is also my opinion that even in this application for applicant to confuse the procedure of lodging appeal originated from the ward tribunal was just human error which is excusable and it fall under technical delay. See the case of *Fortunatus Masha v. William Shija and Another*

[1997] TLR 154 and *Salvand K. A. Rwegasira v. China Henan International Group Co. Ltd.*, Civil Reference No. 18 of 2006. In *Rwegasira* (supra) subscribed to the position taken by a single Justice of the Court in *Fortunatus Masha* (supra), as follows: "A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted." In this case at hand, the Land appeal No. 4976 of 2023 was withdrawn on 10 July 2024 and this application was filed on 22 July of 2024 after expiration of 12 days. In the case of *Bank of M (Tanzania) Limited vs Enock Mwakyusa*, Civil Application No of 2017, CAT at Dar es salaam, the ruling dismissing

the application was supplied to the 11 applicant on 24 October 2017 and the application for extension of time was filed on 8 November 2017 after lapse of 14 days. At page 10 of the judgment, the court find that the applicant was prompt enough to apply for the second bite immediately after she was supplied with the ruling which dismissed his first attempt to apply for enlargement of time to file a Notice of Appeal then proceeded to grant time. Based on the above authority, even in this case at hand I find that that the applicant filed the application at hand promptly and immediately. The applicant managed to advanced sufficient reason for extension of time within which to file an appeal out of time which is technical delay hence the application is granted. The same must be filed within 30 days from the date of this ruling. No order as to costs. DATED at MBEYA on this 29 Day of November 2024. A. A. SINDA JUDGE 12

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