

TANZANIA / JUDGMENT

Mosses Mollel v Paschal Arusha

COURT
TANZLII

DECIDED
7 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF
MANYARA AT BABATI MISCELLANEOUS APPLICATION NO. 17528 OF 2024 (Originating from
Land Revision No. 05 of2023, High Court of Tanzania at Manyara, arising from an order of the
High Court made suo motu to revise Mise. Land Application No. 26 and 27 of2022 before the
District land and Housing Tribunal for Manyara at Babati) MOSES
MOLLEL..... APPLICANT VERSUS PASCHAL
ARUSHA..... RESPONDENT

RULING

1st October 2024 and 4h November 2024 MIRINDO, X: The applicant, Mosses Mollel, applied for
revision before the Court of Appeal in Civil Application 948 of 2023 in respect of the decision of
the High Court (Kahyoza, J.) in Land Revision No. 05 of 2023 delivered on 06/10/2023. However,
when the application came for hearing on 12 July 2024, he withdrew it upon being satisfied that it
was improperly filed. The applicant has now brought the present application for extension of
time to lodge a notice of appeal to the Court of Appeal against the decision of the High Court
(Kahyoza, J.). Mr. John J. Lundu, learned counsel, represented the applicant at the hearing of the
application. The respondent, Pascal Arusha, appeared in person. At the hearing of the
application, Mr. Lundu adopted the supporting affidavit as part of the applicant's oral
submission. He pointed out that the revision application was withdrawn due to the fact that
section 5 (1) of the Appellate Jurisdiction Act, Cap 141 was amended by the Legal Sector Laws
(Miscellaneous Amendment) Act, 2023 1 of 1/12/2024 to allow appeals to the High Court against
revisional orders of the High Court. Mr. Lundu asserted that the delay in lodging notice of appeal
in respect of Land Revision 5/2023 was not due to applicant's negligence or laxity but only due to
changes in the law. The delay to lodge notice of appeal was occasioned by changes in the law
when the applicant was prosecuting revision application. The applicant was in the revision
process challenging the Land Revision but the channel had changed. Paschal Arusha opposed the
application on the account that the applicant's counsel is a seasoned lawyer who should have
known the appropriate channel to process the application. The respondent wondered counsel
why Mr Lundu, who knew the law failed to notice of the legal changes. He prayed that the
application for extension of time be dismissed with costs. It is undisputable that the applicant
sought to revise the decision of the High Court but the application could not be heard on merit on
account to the changes in the law that took place between the lodging of the revision application

and hearing of the application for revision. Also undisputed is the fact that the decision on the Land Revision 05 of 2023 was delivered on 6/10/2023 and the notice of motion was filed on 16/10/2023. The application was set for hearing on 12/7/2024 and it was the withdrawn on the same day. There is an account for the delay in lodging notice of appeal from when the application for revision was lodged to when it was withdrawn. The instant application was filed on 22/7/2024. There is a ten-day delay in lodging the instant application. There is nothing in the supporting affidavit or counsel's submission explaining this ten-day delay. It has frequently been held that 2 an applicant for extension of time to must account for the whole period of the delay in order to be granted the extension of time. Among the cases in which the principle has been restated are Lyamuya Construction Co Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4; Civil Application No. 2 of 2010 and Daudi Haga v Jenitha Abdon Machafu, Civil Reference 1 of 2000. For these reasons, I hold that there is no sufficient cause for extension of time to lodge the notice of appeal. The application is accordingly dismissed with costs. DATED at BABATI this 7th day of November 2024. F.M. MIRINDO JUDGE Court: Ruling delivered in chambers this 7th day of November 2024 in the presence of the applicant's counsel, Mr. John L. Lundu and the respondent in person. B/C: Anna Mathayo (RMA) present Right of appeal explained. F.M. MIRINDO JUDGE 3

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