IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

CAT CIVIL APPLICATION NO. 320/17 OF 2017

(ARUSHA CIVIL APPLICATION NO. 7 OF 2017)

SAFARI PETRO ---------- APPLICANT

VERSUS

BOAY TLEMU ---------- RESPONDENT

(Application from the Order of the High Court of Tanzania at Arusha District Registry)

(Maghimbi, J.)

Dated the 22nd February, 2017

In

Miscellaneous Land Application No.215 of 2016

RULING

9th & 13th March, 2018

MWANGESI, J.A.:

In the application at hand, which is by way of notice of motion taken under the provisions of Rules 10, 47, 48 (1) and (2) and 49 (1), all of the Court of Appeal Rules, 2009 **(the Rules)**, the applicant is moving the Court to grant him extension of time within which, to appeal against the decision of the District land and housing tribunal for Manyara Region, in Land Application No. 89 of 2010, which was delivered on the 21st day of November, 2008. It is supported by an affidavit that was sworn by Petro Safari (the applicant).

Unfortunately, the affidavit in support of the notice of motion, which was sworn by the applicant on the 20th March, 2017, is not that much elaborate and as such, it has been a bit difficult to comprehend the facts deponed therein. On the other hand, the application has been resisted by the respondent in his affidavit in reply, which was sworn by the respondent on the 18th April, 2017. The same bears the same problem as that of the applicant. On the 19th May, 2017 the applicant lodged written submissions in amplification of his notice of motion. This one is even more problematic in that, apart from being made under Rule 89 (2) and 4 (2) (a) and (b) of the **Rules,** which has nothing to do with the notice of motion for extension of time, it is as well incomprehensible.

On the date when the application was called on for hearing before me that is, on the 10th day of March, 2018, the applicant did appear in person unrepresented and hence, fended for himself, which was also the case for the respondent. On being asked to present his application as contained in the notice of motion, on the obvious reasons, the applicant had nothing useful to chip in, other than requesting the Court to adopt what is contained in the documents which he lodged in Court and give him his right. Such position was echoed by the respondent, who told the Court that, he had nothing to add to what he has filed in Court.

Faced with the foregoing situation, I had to resort to the records in the case file, to look for the way forward. The genesis of the application as could be gleaned from the records is that, it arises from the decision of the District land and housing tribunal for Manyara Region, which was handed

down on the 6th September, 2013 in the disfavor of the applicant. The decision aggrieved the applicant and therefore, he was desirous to challenge it in the High Court. However, because he was time barred to do so, on the 10th September, 2014 he lodged an application for extension of time in the High of Tanzania at Arusha, vide Miscellaneous Land Application No. 197 of 2014. The said application was strenuously resisted by the respondent for the reason that, the applicant had failed to account for the delay.

The learned Judge of the High Court (Moshi, J.) after hearing the arguments from both sides, was convinced by the grounds advanced by the respondent that, the applicant had indeed failed to account for the delay. To that end, the application for extension of time was refused. Dissatisfied, the applicant lodged another application in the same Court in Miscellaneous Land Application No. 215 of 2016, which is the subject of this application. The said application was however, dismissed with no order as to costs (Maghimbi, J.) for being *res judicata.* In the order dismissing the application, the learned Judge stated that:

> *"As the applicant had already filed in this Court Miscellaneous Land Application No. 197 of 2014 for the same orders, and the same having been dismissed; this application before me is res judicata and the same is hereby dismissed with no order as to costs."*

Subsequent to the dismissal of his application in the second time, the applicant did lodge the application at hand. In light of the foregoing scenario, two issues stand for deliberation and determination by this Court

that is, **first,** whether or not the application is properly before the Court. **Secondly**, if the first issue is answered in the affirmative, whether or not, the application is meritorious.

After the application by the applicant for extension of time had been refused by the High Court (Moshi J.) in the first instance for want of merit, the remedy available for the applicant was not to lodge another application in the same Court. In terms of the provisions of Rule 45 (b) of **the Rules,** he ought to have gone for a second bite in this Court. In the circumstance, Miscellaneous Land Application No. 215 of 216 was improperly before the High Court and was properly rejected, though it ought to have been by way of being struck out.

And once Miscellaneous Land Application No. 215 of 2016 is ignored and thereby treating this application as a second bite by the applicant, then the first issue above is answered in the affirmative that, the application is properly before the Court as it has been made as a second bite by the applicant.

The subsequent question, which constitutes the second issue, is whether the application is meritorious. An extension of time to an applicant under the provisions of Rule 10 of **the Rules,** can only be granted by the Court upon good cause being shown. In its own wording the provision reads:

> *"The Court may, **upon good cause shown, extend the time limited by these Rules** or any decision of the High Court or tribunal for the doing of any act authorized or required by these*

Rules, whether before or after the expiration of that time and whether before or after the doing of that act; and any reference in these Rules to any such time shall be construed as reference to that time as extended."

[Emphasis supplied]

What has to be considered in the instant application, in light of the stipulation above is whether or not, the applicant has managed to advance good cause for his delay in lodging his application for extension of time to appeal. As earlier hinted, the affidavit by the applicant in support of the notice of motion is very scanty. All the same, what could be discerned from the record is that, the decision sought to be appealed against by the applicant was delivered on the 06th September, 2013. Thereafter, the applicant was supplied with the document requested for appeal purposes on the 21st January, 2014. However, the applicant lodged his first application for extension of time at the High Court on the 10th October, 2014 that is to say, after the elapse of about 232 days.

In his affidavit in support of the notice of motion, there has never been a mention of the said 232 days in all the eight paragraphs of the affidavit. The position of law is that, where there has been a delay in doing any act in compliance with the requirement of law, each day of the delay has to be accounted for. See: **Bushiri Hassan Vs Latifa Lukio Mashayo,** Civil Application No. 3 of 2007, where the Court stated that:

"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."

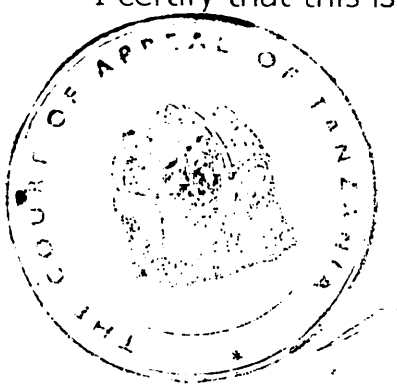
Guided by the foregoing decision, the fact that there has been no explanation by the applicant regarding the delay in the 232 days, the implication is that there was none. In the circumstances, he has failed to give good cause to move the Court to grant the sought extension of time. As it was in the first application, this application is found to lack merit and has to fail. It is accordingly dismissed for want of merit with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 12th day of March, 2018.

S. S. MWANGESI
JUSTICE OF APPEAL

I certify that this is a true copy of the Original.



E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL