

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 343/17 OF 2021

KIBAHA HOUSING COOPERATIVE

SOCIETY LIMITED (KIHOCOSO) APPLICANT

VERSUS

JUDITH YOAS 1ST RESPONDENT
YUSUFU SHAMTE 2ND RESPONDENT
DAUDI LUKWALO 3RD RESPONDENT
SCOLA FRED 4TH RESPONDENT
ABDALLAH RASHID 5TH RESPONDENT
SARAH MKENDA 6TH RESPONDENT
GODWIN ELIAKUNDI 7TH RESPONDENT
EMANUEL YOAS 8TH RESPONDENT
PROSPER CHOKALA 9TH RESPONDENT
JOHN LUGOMELA 10TH RESPONDENT
SAID MNUNDUMA 11TH RESPONDENT
BEATRICE MWAKALONGE 12TH RESPONDENT
SAULI OMARY CHIWANGA 13TH RESPONDENT
KHATIBU RAMADHANI 14TH RESPONDENT
BETTY EDWARD 15TH RESPONDENT

**(Application for extension of time from the decision of the High Court of
Tanzania at Dar es salaam)**

(Matuma, J.)

dated the 10th day of July, 2020

in

Land Appeal No.129 of 2017

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RULING

7th & 16th November, 2023

MLACHA, J.A.:

By way of notice of motion supported by affidavit, the applicant, Kibaha Housing Cooperative Society Limited (KIHOCOSO), filed an

application for extension of time up on which to lodge an application for stay of execution of the decision of the High Court of Tanzania (Land Division) made in Civil Appeal No. 129 of 2017. The application is made under rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and is supported by an affidavit of Ambonisye Nsajigwa Mwakang'ata, a Principal Officer of the applicant. The respondents, named above, were the decree holders in the High Court.

The applicant is seeking extension of time on two grounds; technical delay and illegality of the decision of the High Court. I will address the grounds, but before doing so, the background of the matter will be produced albeit briefly. The affidavit and documents attached to the application show that the applicant was aggrieved by the decision of the High Court and lodged a notice of appeal along with Miscellaneous Land Application No. 329 of 2019 seeking leave to appeal to this Court. This was done on 10th June 2019. On 26th August, the respondents lodged Miscellaneous Application for execution No. 58 of 2019 seeking to execute the decree. In reaction to that, the applicant lodged Miscellaneous Application No.625 of 2019 seeking stay of execution of the decision pending leave. The application for leave was granted but the application for stay of execution was dismissed. Still undaunted, the applicant filed

Miscellaneous Land Application No. 521 of 2020 for extension of time within which to file an application for stay of execution. It was struck out on 22nd July 2021. Faced with the threat of execution, the applicant filed the current application on 29th July 2021 seeking extension of time up on which to file an application for stay of execution of the decree of the High Court.

In the affidavit in reply filed by the respondents, it was stated that, the respondents were exercising their right to file the application for execution as there was no any order of stay. It was stated further that, the applicant was negligent in handling her application for stay of execution making it improperly before the Court and struck out. It was added that, the leave was fraudulently procured as the said Ambonisye Nsajigwa Mwang'ata, who deponed to be an officer of the applicant, is not among the persons who were allocated the suit plots and never worked with Kibaha Municipal Council. It was also stated that there was no reason why the applicant should not have filed the application for stay of execution in time.

Mr. Jimmy Mroso, learned advocate, appeared for the applicant, while the respondents had the services of Mr. Desidery Ndibalema, learned advocate. Counsel for the applicant filed written submissions and had a

chance to make oral submissions to substantiate what had been submitted in court. Counsel for the respondents did not file any written submissions.

It was submitted in support of the application that, the applicant was delayed in the cause of conducting proceedings in the High Court in pursuit of his rights. That, this application was filed within 7 days from the date of the decision of the last application, a period which is reasonable.

Counsel for the applicant proceeded to submit that illegality of the decision of the High Court was pointed out in the ruling of the application for leave. He argued the court to take note of the contents of the decision.

It was submitted for the respondents that the application for stay of execution was based on the application for leave on the mistake of the applicant rendering it hopeless and dismissed. It was also submitted that the applicant filed the application for extension of time in a court which had no jurisdiction. It was added that the applicant has failed to account for each day of delay making this application incompetent. It was further pointed out that, the application is bad in law because it has omitted the name of Fredy Mkenda who was No. 5 in the High Court thereby making 15 respondents instead of 16 respondents.

In rejoinder it was submitted that the period in between was used to conduct other proceedings in the High Court and thus excusable. On the

missing name, it was submitted that the omission is curable under rule 111 of the Rules.

Extension of time is done under rule 10 of the Rules. The Rule provides that:-

*"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 after the expiration of that time and whether before or after 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."*

We have a litany of authorities on which have guidance on the import of rule 10. They include; **National Housing Corporation & others v. Jin Lang Li** (Supra), **Andrew Athuman Ntandu & another. Danstan Peter Rima** (Supra) **Victoria Real Estate Development Limited v. Tanzania Investment Bank And Two Others**, Civil Application No. 225 Of 2014 and **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010. In **Lyamuya Construction Company Ltd** (supra) it was said at page 6 to 7 as under:-

*"As a matter of general principle, it is in the **discretion of the Court** to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:- (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) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".*

Reading through the affidavits and submissions, I can gathered the following; one, the decision in Land Appeal No. 129 of 2019 was made in on 20th May 2019. Two, the application for leave was filed on 10th June 2019 which was 20 days after the date of the decision. Three, the applicant filed four applications in the period, that is; the application for leave, the application for stay of execution pending leave, the application for stay of execution and the application for extension of time up on which to file an application for stay of execution. All applications were not

successful. Four, the applicant was engaged in proceedings at the High Court from 20th June 2019, when the application for leave was lodged, up to 22th July 2021, when the application for extension of time was struck out.

Reading through the records, I could not see any ill motive on the part of the applicant in the filing and conduct of the applications. She appears to have been trying to find a solution to her problems, nothing more. I agree with counsel for the applicant that the proceedings were conducted bonafide. The time spent in the conduct of the proceedings is therefore excusable in what is referred to as 'technical delay'. An account of the period outside the technical delay period was also made. One will note that there is a short span of time. The first application was filed within 20 days of the decision of the High Court. This application was filed within 7 days from the date of the decision of the last application. The period involved in both situations was short and reasonable.

It is thus my finding that, the applicant has accounted for the delay. It is also obvious that she acted promptly, without negligence on her side in the spirit of **Lyamuya Construction Company Ltd** (supra), giving merits to the application.

In view of the above finding, I see no reason to discuss the ground on illegality.

That said, in the exercise of the discretion of the Court under rule 10 of the Rules, the application is granted. The applicant is given 30 days within which to file her application for extension of time.

It is so ordered.

DATED at **DAR ES SALAAM** this 15th day of November, 2023.

L. M. MLACHA
JUSTICE OF APPEAL

The Ruling delivered this 16th day of November, 2023 in the presence of Mr. Desidery Ndibalema, holding brief for Mr. Jimmy Mrosso, learned advocate for the Applicant, and also learned advocate, for the Respondents, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL