

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: NDIKA, J.A., RUMANYIKA, J.A., And MURUKE, J.A.)

CIVIL APPEAL NO. 218 OF 2021

BETWEEN

USWEGE WEBB LUHANGA 1ST APPELLANT

TUMAINI JOSEPH LUHANGA 2ND APPELLANT

VERSUS

MUSSA MOHAMED MNASI 1ST RESPONDENT

BENARD MWOMBEEKI MUKASA 2ND RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Mbeya)

(Utamwa, J.)

dated the 10th day of February, 2021

in

Misc. Land Application No. 41 of 2020)

JUDGMENT OF THE COURT

12th & 23rd February, 2024

RUMANYIKA, J.A.:

On 10/02/2021, the High Court of Tanzania at Mbeya ("the court") refused Uswege Webb Luhanga and Tumaini Joseph Luhanga, the appellants herein, an extension of time within which they could lodge an appeal. They intended to assail a decision dated 13/05/2013 of the District Land and Housing Tribunal for Mbeya at Mbeya ("the DLHT").

For better appreciation of the contending issues, namely a technical delay as pleaded by the appellants and bitterly opposed by the respondents' counsel, the factual setting arising to the present appeal may be fairly long but useful. It goes thus:

The appellants are husband and wife. They guaranteed a repayment of loan of TZS. 21,000,000/= advanced to the 2nd respondent by the 1st respondent. To make such loan agreement executable, the appellants mortgaged their house on Plot No. 50 Block I at Uzunguni area in the City of Mbeya (the property). However, the 2nd respondent defaulted, and for that reason the 1st respondent undertook to sell the property to realize the money. In opposing the intended sale, the appellants filed Land Application No. 75 of 2012 in the DLHT against the respondents claiming the sale to be unlawful. The appellants lost the case. Aggrieved by that decision, they lodged Land Appeal No. 15 of 2013 in the court, which they withdrew for some reasons later. Then they lodged yet another one, Land Appeal No. 16 of 2015 which eventually was struck out. However, desirous of pursuing an appeal out of time, the appellants sought an extension of time to appeal which the court struck out. They never gave in. They lodged yet another application for extension of time but again the court struck it out. Still

struggling to quench their thirst, the appellants lodged a fresh application for extension of time but they lost it on account of failure to show sufficient reason to warrant the extension of time. They are now before us challenging that decision, with three points of grievance as follows:

- 1. That, learned Judge erred in law and fact by holding the appellant's delay was more of technical than being actual, thereby constituting sufficient ground.*
- 2. That, the learned Judge erred in law and fact in failing to hold that the test for granting extension of time is subjective and the appellants met it.*
- 3. That the learned Judge erred in law by not considering that the DLHT decision [was tainted with illegality].*

The appellants filed their written submission on 13/08/2021. Mussa Mohamed Mwasi and Bernard Mwombeki Mukasa ("the respondents") did not file any.

The appellants appeared in person unrepresented at the hearing on 12/02/2024 whereas the respondents had the services of Mr. Issaya Mwanri, learned counsel.

Expounding on their written submission, the 1st appellant contended that the reasons for his delay were technical thus, beyond his control. For, he spent a long time in the courts' corridors which the court discounted erroneously. More demonstrating on the said technical delay, he stated three facts; One, that, they were not availed copies of the impugned judgment and decree until late in the day, after the local Regional Commissioner intervened. Two, that, the belatedly received copies bore different dates which took the appellants quite some time to have the same rectified. And three, that, it took them quite some time looking for some legal service and therefore, delayed of twenty-one good days. Moreover, he wondered if such a slight delay could cost him the house for which he had used comparatively a bigger portion of his life to acquire and develop. For, he accepts the debt and is ready to pay.

The 2nd appellant said little of it, contending that she had challenges which hindered her from appealing within time.

In reply, Mr. Mwanri contended that, powers of the court to grant extension of time is discretionary. He asserted that, as a matter of fact and general rule, the Court could not interfere with the lower court's discretionary findings, in this case the refusal of extension of time simply at

its pleasure. For, the appellants did not show any misdirection or misapprehension of the evidence by the court occasioning injustice, as exception to the general rule. Nevertheless, Mr. Mwanri sympathized with the appellants for the technical delay that they may have suffered. However, he asserted that their failure to account for each day of the twenty-one days' delay is inexcusable.

As regards the 3rd ground of appeal, on the alleged illegality namely, the DLHT's Chair ignored the assessors' opinions, Mr. Mwanri implored us to discount the complaint for one reason, that the point was neither raised before the court nor deposed in the founding affidavit thus, the Court has no jurisdiction to entertain it. He cited the Court's decision in **Praygod Mbagu v. The Government of Kenya And Another**, Civil Reference No. 04 of 2019 to reinforce his point. Further attempting to prove the appellants wrong, the learned counsel referred us to page 109 of the record of appeal where the DLHT's presiding chair recognized the presence of the assessors and appreciated their opinions. Nevertheless, the learned counsel added, the alleged illegality is not the one which is conspicuous on the record. For, it needed evidence and such a long drawn argument to establish it. He cited our decision in **Ngao Godwin Losero v. Julius**

Mwarabu, Civil Application No. 10 of 2015 (unreported) to beef up his point.

On rejoinder, the 1st appellant reiterated his earlier submission. In addition, he asserted that his case is peculiar and therefore deserves a special approach, notwithstanding long pendency of the dispute between parties. On his part, the 2nd respondent still sought to rely on the 1st appellant's submission.

Upon hearing of the parties, the issue is whether the appellants showed sufficient grounds for the granting of extension of time sought. What amounts to sufficient ground depends on the circumstances of the case. See- **Regional Manager Tanroads Kagera v. Ruaha Concrete Company Ltd.**, Civil Application No. 96 of 2007 (unreported) and a plethora of our decisions.

As a matter of principle, we wish to reiterate that, the powers to grant or refuse to grant an extension of time for doing any act is the court's domain and subject to judicial discretion. See- **Mbogo v. Shah** [1968] EA. In that case, the defunct Court of Appeal for East Africa re-stated four requisite factors to be considered in the similar applications.

The factors are; the length of the delay and its reasons, whether there is arguable case on appeal, and the degree of prejudice to the defendant, if time is extended. We cannot, in the case before us ignore the obvious that, partly, the appellants' delay was technical and partly it was real or actual. At least it is not disputed that, upon losing the battle in the DLHT on 13/05/2013, the appellants intimated their desire to assail the decision. There followed a series of matters in the court, namely, two appeals and three applications. All this time, their matters were unsuccessful as they were either withdrawn or struck out due to incompetence. Further, it is undeniable fact that the five matters referred above were filed timeously. However, the appellants' last application was struck out on 22/04/2020 whereas the one refused and which resulted to the present appeal was lodged on 13/05/2020, that is twenty-one days thereafter.

Justifying the refusal of extension of time sought, at page 157 of the record, the court stated:

"...the sub-issue at this juncture is whether or not the applicants acted promptly in filing the present application upon the second application...being struck out...In my view, the answer to this sub-issue is not in favour of the applicants for the following

grounds: in fact, as shown above, it is not disputed that the second application was struck out on 22nd April, 2020. The application under consideration was lodged in this court on 13th May, 2020...By simple arithmetic, this application was filed upon the expiry of 21 days...Nonetheless, there is no any explanation by the applicants regarding this particular delay of 21 days..."

It is trite law that a delay even of a single day has to be accounted for. In the instant case therefore, the appellants miserably failed to account for each day of the twenty-one days' delay, which accrued from 22nd April, 2020 to 13th May, 2020. Its effect is as the Court stated in **Ester Baruti v. Seith Senyael Ayo & Another** (Civil Application No. 514/17 of 2022) [2023] TZCA 17824 (13 November 2023; TanzLII). We have duly considered the appellants' depositions at paragraphs 2-9 of the founding affidavit filed in the court. Indeed, the appellants' alleged forward and backwards movements in the court and that upon receiving copies of the judgment and decree though late, their dates varied. As such, their delayed was technical.

However, what essentially is at issue and it is considered to be the actual delay, is the twenty-one days counted between 22/04/2020,

when the appellants' application was struck out, and 13/05/2020 when they lodged the said futile application for extension of time, from which this appeal arises.

The appellants may have been ignorant of the legal procedure applicable in appealing which took them time going around for legal assistance. Unfortunately however, neither did we find such deposition in the founding affidavit nor were we told, when exactly the appellants procured the alleged legal assistance. Nevertheless, we take cognizance of our legal proposition that has been repeatedly stated, for instance in **Bariki Israel v. R**, Criminal Application No. 4 of 2011 and **Charles Salugi v. R**, Criminal Application No. 3 of 2011 (both unreported), that. That a prudent and diligent party who needs legal assistance should act promptly. Put in other words, the right to a fair hearing obliges each party to be timely on his toes, much as ignorance of law is no defence. He he who sleeps over his right, as did the appellants for twenty-one good days, has no right. Grounds one and two of the appeal are dismissed.

The other ground raised is one of illegality of the DLHT's decision. On that one, in **The PS Ministry of Defence and National Service v. Devram Valambhia** [1991] TLR 387 we stated:

".....when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

The principle referred above could be applicable in this case. However, unlike in **Valambhia case** (supra) where the alleged illegality was the issuance by the High Court of a garnishee order against the Government of Tanzania without affording it a hearing, contrary to the principles of natural justice, in the instant case, the appellants' complaints stand to be dismissed at once. We agree with Mr. Mwanri that the point is not worth it. For, the alleged illegality is so latent that it needs a long drawn argument for it to be established. It is more so, because the appellants' contention is inconsistent with the record. Since, at pages 109 of the record the presiding chair of the DLHT is recorded to have recognized the presence of the assessors and he acknowledged receipt of their opinions, as rightly submitted by Mr. Mwanri. We abide by the principle of sanctity of the court records. Therefore, we are satisfied to find that the presiding chair's findings reflect what actually transpired in the

DLHT. We are unable to hold otherwise in the circumstances. The 3rd point of grievance is also dismissed.

In conclusion, we find no merits in the appeal. Consequently, it is dismissed with costs.

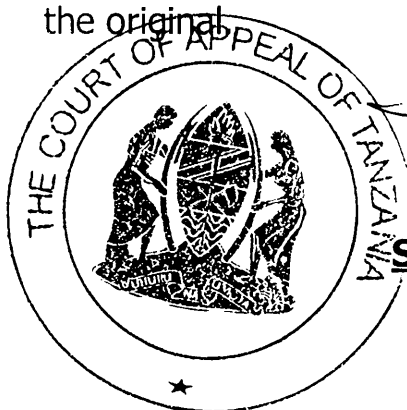
DATED at **MBEYA** this 23rd day of February, 2024

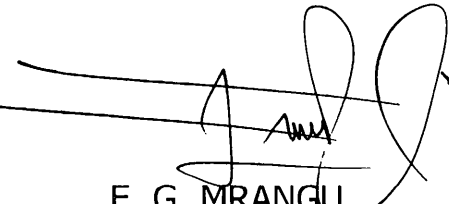
G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

Z. G. MURUKE.
JUSTICE OF APPEAL

The Judgment delivered this 23rd day of February, 2024 in the presence of Mr. Ibrahim Athuman, holding brief of Mr. Issaya Mwanri, learned counsel for the 1st and 2nd Respondents and in absence of 1st and 2nd Appellants despite being informed, is hereby certified as a true copy of the original




E. G. MRANGU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL