

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: KWARIKO, J.A., LEVIRA, J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 492 OF 2020

JULIUS MATOGOLO APPELLANT

VERSUS

HENERICO LUGAYILA RESPONDENT

**(Appeal from the Decision of the High Court of Tanzania
at Mwanza Sub- Registry)**

(Mgeyekwa, J.)

dated the 24th day of April, 2020

in

Miscellaneous Land Case Appeal No. 53 of 2019

JUDGMENT OF THE COURT

19th & 23rd February, 2024

KWARIKO, J.A.:

Formerly, the respondent sued the appellant before the Ward Tribunal of Magu Urban for encroachment into his land in Land Application No. 12 of 2018. The appellant resisted the claim and thus the matter was fully tried. However, in the course of hearing, through Matata and Company Advocate, the appellant prayed for transfer of the case to the District Land and Housing

Tribunal for Mwanza (henceforth the DLHT) as he intended to engage an advocate to represent him. This prayer was refused by the Ward Tribunal as a result, the trial proceeded to its conclusion up to 5th March, 2018 and the date of judgment was set to be 7th March, 2018. However, before that date, the appellant rushed to the DLHT and filed appeal on 5th March, 2018 challenging the jurisdiction of the Ward Tribunal. In its decision, the DLHT found the appeal incompetent having been preferred prematurely as the decision of the Ward Tribunal was yet to be delivered. The appeal was accordingly struck out on 11th January, 2019.

The record of appeal shows that, following the decision by the DLHT, the appellant filed Miscellaneous Land Application No. 27 of 2019 dated 21st February, 2019, for extension of time to lodge an appeal before the DLHT against the decision of the Ward Tribunal which was delivered on 7th March, 2018. The main reason advanced by the applicant for grant of extension of time was the issue of illegality in respect of the pecuniary jurisdiction of the Ward Tribunal. In its decision, the DLHT found that the applicant did not account for the delay to file the appeal and the issue of pecuniary jurisdiction was not proved, since the appellant did not back his complaint with any valuation of the land in dispute, the application was accordingly dismissed.

Undaunted, the appellant appealed to the High Court, again fronting the issue of jurisdiction of the Ward Tribunal. This issue was found unmerited and that, the appellant had not accounted for the delay. The appeal was accordingly dismissed, hence the instant appeal.

Before this Court, the appellant has raised the following three grounds:

- 1. That the trial Tribunal erred in law for hearing and determining the land case while it had no pecuniary jurisdiction.*
- 2. That the trial Tribunal was not properly constituted in law to determine the land case.*

In the alternative

- 3. That the learned Judge erred in law for failure to appreciate and arrived at the decision that following striking out of the incompetent Land Appeal No. 28 of 2018 in the District Land and Housing Tribunal for Mwanza on 11.01.2019, the appellant was not required to account for a period of 11 months again in the Misc. Land Application No. 27 of 2019.*

At the hearing of the appeal, the appellant appeared in person, unrepresented while the respondent had the services of Mr. Thobias Ruge Ferdinand, learned advocate. When we invited him to argue the appeal, the

appellant abandoned the first and second grounds of appeal. As for the third ground, he contended that he was late to appeal to the DLHT because he had been prosecuting Land Appeal No. 28 of 2018 before the very Tribunal and the case file of the Ward Tribunal was annexed to the case file in the appeal before the DLHT.

In reply, Mr. Ferdinand opposed this appeal and argued that, the appellant had not presented sufficient reasons for the delay that is why the DLHT and the High Court dismissed his application and appeal, respectively. He went on to contend that, the appellant was out of time for eleven months to file the intended appeal. Besides, the learned counsel argued that, even after striking out the incompetent appeal, it took the appellant more than forty days to apply for extension of time to file appeal against the decision of the trial tribunal. On the basis of his submission, Mr. Ferdinand implored us to dismiss this appeal as the appellant has failed to present good cause to justify extension of time to file appeal to the DLHT.

In his brief rejoinder, the appellant insisted that Land Appeal No. 28 of 2018 was the cause of the delay.

We have dispassionately considered the single ground of appeal and the submissions by the parties for and against the appeal. The crucial issue

which calls for our determination is whether this appeal has merit. The appellant's quest is for extension of time to file appeal to the DLHT against the decision of the Ward Tribunal. Although before the two courts below, the appellant tried, albeit erroneously, to bring reasons for the delay which touched the merit of the dispute, he has now decided to abandon them and concentrated on the reason that, he was late to appeal as he was prosecuting Land Appeal No. 28 of 2018 at the DLHT. He has faulted the High Court for holding that, he was required to account for the delay of eleven months he purported to have spent in prosecuting Land Appeal No. 28 of 2018.

It is trite law in our jurisdiction that, a party seeking the Court to exercise its judicial discretion to grant the application for extension of time to do a particular action, must show good cause for failure to do what he ought to have done within the prescribed time. Further, an application for extension of time to do a particular act is entirely in the discretion of the court to grant or refuse it. However, this discretion should be exercised judicially, the consideration being that there must be sufficient cause for doing so. Although, what amounts to good cause has not been defined, there are some factors/conditions which must be met by the applicant for consideration by the court. Factors such as: an account for the delay;

whether the application has been brought promptly; the exercise of diligence on the part of the applicant; and any other sufficient reasons according to the particular circumstances of the case, such as, the illegality of the impugned decision. See the decisions in **Aruben Chaggan Mistry v. Naushad Mohamed & Three Others**, Civil Application No. 6 of 2016; **TANESCO v. Mufungo Leonard Majura & Fifteen Others**, Civil Application No. 94 of 2016 (both unreported).

We have weighed the applicant's reasons for the delay to file his appeal to the DLHT. In this case, the appellant insisted that he was prosecuting Land Appeal No. 28 of 2018 before the DLHT. This is termed as technical delay, which, if successfully proved is good cause for extension of time. For instance, in the case of **Fortunatus Masha v. William Shija & Another** [1997] T.L.R. 154, it was held thus:

"A distinction should be made between cases involving real or actual delays and those like the present one which only involve what can be called technical delays in the sense that the original appeal was lodged in time but the present situation arose only because the original appeal for one reason or another has been found to be incompetent and a

fresh appeal has to be instituted. In the circumstances, the negligence if any really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this Court striking out the first appeal.”

Relying on this decision, the question to be asked here is whether the principle of technical delay can be applied in the present case. As it was found by the two courts below, Land Appeal No. 28 of 2018 of the DLHT was incompetent since it was filed even before the Ward Tribunal handed out its decision as we have earlier on shown in the chronology of events regarding this matter. It is clear that the appellant was the architect of his own legal woes and we are of the view that prosecution of appeal against a non-existent decision cannot be good cause for extension of time. This is because, had the appellant waited for the Ward Tribunal to deliver its decision before he filed his appeal, he would probably not have encountered any difficulties in search for his right. As such, the appellant cannot be

allowed to benefit from his deliberate move when he decided to pursue a wrong way for a wrong purpose (see also; **Dominic Ishengoma v. Geita Gold Mining Ltd**, Civil Application No. 146/8 of 2020 (unreported)).

The appellant has also argued that, the case file of the Ward Tribunal was annexed in the file of Land Appeal No. 28 of 2018. We have considered this submission and found that, even if the case file of the Ward Tribunal was not annexed in the file of the DLHT, the appellant could not have filed another appeal while the first one was still pending. Therefore, the reason which has been advanced by the appellant for delay to file appeal has no merit.

However, even if Land Appeal No. 28 of 2018 was properly before the DLHT, the appellant did not file the application for extension of time to appeal promptly following its decision. The record of appeal shows that the said appeal was decided on 11th January, 2019 but it was until 21st February, 2019 when the appellant lodged Miscellaneous Land Application No. 27 of 2019 to the DLHT seeking extension of time to appeal. He has not accounted for that period of forty days.

Further, the appellant has not accounted for the period after expiry of forty-five days within which he could have appealed against the decision of the Ward Tribunal which was delivered on 7th March, 2018. The forty-five days expired on 21st April, 2018. Counting from there, the appellant was late for more than ten months before he filed an application for extension of time to file appeal in the DLHT. The law is settled that each day of delay should be accounted for by the applicant. For example, in the case of **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), the Court stated thus:

"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".

[See also: **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015 (unreported).

From what we have shown above, there is no gainsaying that, the High Court did not err to dismiss the appellant's appeal as he did not present sufficient reason to justify granting of extension of time to appeal to the

DLHT. Consequently, we find the appeal without merit. We hereby dismiss it with costs.

DATED at **MWANZA** this 22nd day of February, 2024.

M. A. KWARIKO
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

Judgment delivered this 23rd day of February, 2024 in the presence of the appellant in person, and Mr. Thobias Ruge, learned counsel for the respondent, is hereby certified as a true copy of the original.


C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL