

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISCELLANEOUS LAND APPLICATION 2 OF 2012

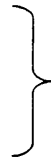
(Arising from Tabora DLHT Land Appeal No. 13/2012)

MICHAEL FALEAPPLICANT

VERSUS

1. JICHEMBELE JITELEJA

2. MAKANI MITA



.....RESPONDENT

RULING

6 & 19/8/2013

S.M. UMANYIKA, J.

Michael Fale (the applicant), applies under section 14 of the law of limitation Act, Cap 89 R.E 2002 and section 95 of the civil procedure code, cap 33 R.E 2002. For extension of time within which to lodge appeal against the ruling of the district land and housing tribunal – Tabora (DLHT) meted on him on 07/12/2011 I suppose. The application is contested by Jichembile Jiteleja and Makani Mita (the 1st and 2nd respondents) respectively.

Both appear unrepresented.

At the hearing, the applicant, having adopted all the contents of affidavit supporting his application, submitted nothing. But that he applied for copy of the material ruling immediately, and it took him two (2) solid months. Then he instituted this application. That at times, he fell sick and was admitted in hospital for six (6) consecutive days. Then continued attending some medications, for example hourly injections (as out patient) between 2nd – 13th February 2012. Also some 21 (twenty one) days later.

The 1st respondent submitted that at times the applicant was missing. No way he should have prepared and serve him the counter affidavit. He urged this court see into it then determine the application.

On his part, the 2nd respondent submitted that he lodged a counter affidavit on 12.11.2012, although this one was a non scientific application. One was satisfied with the DLHT decision. Save for his change of mind. He could not know exactly, when the applicant was supplied with copy of the impugned ruling. But urged me to dismiss the application.

The applicant is categorical in that the DLHT supplied him copies of the ruling and drawn order on 20th & 27th December, 2012 respectively. In which case, his appeal was time barred already. Quite beyond his will (paragraphs 2 -7 of the affidavit).

discretionary as they are, powers of this court to grant extension of time are also derived from section 38 (1) of the land disputes courts settlement Act, cap. 216. Provided that there is sufficient cause for ordering the extension.

In other words, unless good and sufficient grounds are assigned, no application can be granted. Here, the only reason assigned is the delayed copies of the ruling and drawn order.

The simple arithmetics will show clearly, that he obtained the copies about $11\frac{20}{30}$ months later. The limitation period for appeals originating at ward tribunals, like this one, is 60 (sixty) days. He wrote, asking for copy of the judgment only on 24/2/2012 ie. $2\frac{17}{30}$ months later. Why not before? I will come back to this one shortly herein after. Nevertheless there is indeed, likelihood of delayed copies having been source of the delayed intended appeal.

But the question remains, was attachment of the impugned judgment and drawn order to the petition of appeal necessary at law?

It is open secret that it all began at Igumbi ward tribunal, Igunga district. It is thus a 2nd appeal. What then are the documents one needs to attach to the appeal? I do not think copy of the impugned judgment, decree, drawn order (list not exhaustive) are one of them (be it a PC or ward tribunal appeals for that matter). The moment one lodges, on payment of the requisite court fees, the

petition of the process is not complete. But Here, its logic is simple that it is the district court, or in our case the DLHT which is duty bound to prepare and dispatch the record (the impugned judgment inclusive) to the appeal court. Whenever it is called for. On this one, I will subscribe to the wisdom of Luanda, J (as then was) in the case of Gregorio Raphael Vs Pastory Rwehabula (2005) TLR 100.

As such, the applicant has assigned no sufficient, leave alone reason for his delay. For the whole year or so his waiting for the copy of documents was uncalled for.

However, even assuming for the sake of it, that the delay was justified, and now that he had the copies with him on 27.12.2012, how promptly was it brought, the application was lodged two months later. Still one had no good, leave alone apparent explanation.

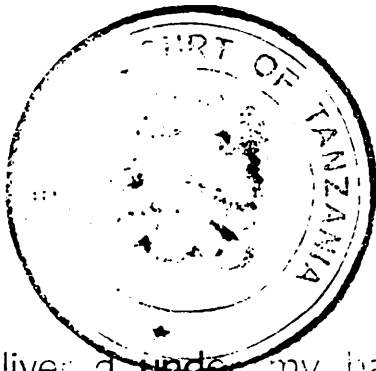
I promised also to address the fact that he did not, but ask for copy of the judgment more than two months of the impugned judgment ever delivered in his presence. Why all this long? This also leaves much to be desired.

In the course of arguing his application, the applicant introduced, and he pleaded the ill health having attributed to his delay. This one by all means is a material fact, but was never ever pleaded in the material affidavit. It is good but purely an after thought. Like the former one, this ground can not be sufficient to

ground grant of this application. I think it is also a principle in good governance, that no litigation can be endless. Therefore, every application for extension of time needs be subordinated thereto.

Application for extension of time is refused with costs.

R/A explained




S.M. RUMANYIKA

JUDGE

26/08/2013

Delivered under my hand and seal of the court this 19/8/013 in chambers. In the presence of the parties.




S.M. RUMANYIKA

JUDGE

19.8.2013