

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISC. LAND APPLICATION NO. 164 OF 2017

*(Arising from District Land Housing Tribunal at Musoma in Land Application
No. 267 of 2012, Originating from Salama Ward Tribunal Land Application
No. 1 of 2012)*

MAGORI THOMAS.....APPLICANT

VERSUS

JOSEPHAT MBISO.....RESPONDENT

RULING

04/12/2018 & 31/01/2019

Gwae, J

This ruling is an outcome of the applicant's application for extension within which to file an appeal to the court against the decision of District Land and Housing Tribunal for Mara at Musoma.

The record of this court reveals that the applicant sometimes on October 2013 filed an application in this court for revision which was registered as Revision Application No. 2 of 2014. The applicant's application for revision was dismissed on the 30th June 2017 on the ground that issues raised by the applicant therein were to be addressed by the court by way of an appeal and not revision.

Following the order of this court (**De-Mello, J**), the applicant, on the 28th July 2017, filed this application under section 38 (1) of the Land Courts' Act, Cap 216 Revised Edition, 2002

In essence, the applicant's affidavit is to the effect that; his delay to file the intended appeal was due to inadvertent act of his advocate of filing an application for revision instead of an appeal as properly observed by the court and he being a layperson he believed in his advocate as well as the that there are chances of success.

The respondent seriously resisted the applicant's application by asserting that the alleged misguidance by an advocate and being a layperson do not constitute sufficient reasons to be engaged by the court and that the intended appeal has no chances of success.

At the hearing of the application, the applicant appeared in person while the respondent was represented by **Ms. Sakila**, the learned advocate. Both parties wholly sought consideration of their respective affidavits by this court.

I have clearly looked at the grounds set forth in the applicant's affidavit and affidavit in opposition as briefly depicted herein above. It is trite law that once a person has prosecuted or wrong filed a matter to a

incompetent court, the period when the matter or proceeding was, with good faith, filed or being tried or prosecuted must be excluded and this is in accordance with section 21 (1) of the Law of Limitation Act, Cap 89 R. E, 2002 which for purpose of clarity is herein under reproduced;

21(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it.

Since in our case the applicant had been faithfully prosecuting his revision since 2014 till 30th June 2017 when his revision application was dismissed, it follows therefore the time when the matter was pending in court for revision must be excluded in the computation.

Now, therefore, this court has to ask itself whether the period of delay from 30th June 2017 to 28th July 2017 has been accounted for by the applicant. The applicant has not accounted for this delay (28 days delay. Record reveals further that when the ruling vide Revision No. 2 of 2014 was delivered the applicant's counsel one **Haji Mtogoro** was present.

In **African Airlines International Ltd v. Eastern and Southern African Trade and Development Bank** [2003] 1 EA 1 where among other things it was held;

“All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended”.

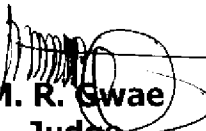
Since sufficient reason as envisaged by the provision of law cannot be laid down by any hard and fast rules except by reference to all circumstances of each case. I am therefore bound to carefully look at the parties’ affidavits, annexures and records to ascertain if there are material factors that may justify this court to exercise its discretion judicially. The applicant to my considered view ought to count each and every day of delay as opposed to what he had left it for the court to do in his behalf.

I have even looked at the order sought to be appealed by the intending appellant and noted that there was an order of execution of decree of the ward tribunal issued on 15th October 2013 vide Misc. Land Application No. 267 of 2012 as rightly cited by the applicant, where eviction order against the applicant was issued. Hence no main case/appeal that is subject to the intended appeal implying absence of arguable appeal.

Time table for litigation is very essential equally extension of time must pertain with sufficient reason or cause as required by the law.


In the event, I dismiss this application with no order as to costs.

It is so ordered.




M. R. Gwae
Judge
31/01/2019

Right of Appeal fully explained



M. R. Gwae
Judge
31/01/2019

Court: Ruling read over to the applicant who is present in person and in the absence of the respondent.


M. R. Gwae,
Judge
31/01/2019

