

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO 5 OF 2020

*(C/F the District land and Housing tribunal of Manyara at Babati vide
Application No 52 of 2017, Originating from Dabil Ward Tribunal case
No.7/2017)*

LIBERAT AWEDAAPPLICANT

VERSUS

NICODEMUS BUNG'ERESPONDENT

RULING

ROBERT, J:-

Before me is an application for extension of time to file an appeal out of time against the judgment and decree of the District Land and Housing Tribunal for Manyara at Babati. The application is made under section 14 (1) of the Law of Limitation Act, (Cap. 89 R.E 2002).

The application is supported by the affidavit of the Applicant, Liberat Aweda and resisted through the counter affidavit sworn by the Respondent, Nicodemus Bung'e.

It is pertinent that I start with a brief factual background and legal basis for this application. The Applicant, Liberat Aweda, having been aggrieved by the decision of the District Land and Housing Tribunal for Manyara at Babati in Land Appeal No. 52 Of 2017 intended to appeal against the decision of the Tribunal but failed to file his appeal on time, he therefore decided to file this application seeking extension of time to file an appeal out of time.

At the hearing of the application, the Applicant and the Respondent appeared in person unrepresented. Both parties prayed successfully for the application to be argued by way of written submissions.

Submitting in support of the application, the Applicant stated that the application is preferred under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002 which vests discretionary powers to the court to extend time if the Applicant shows reasonable or sufficient cause for the delay in doing the thing that is sought to be done.

Submitting on the reasons for the delay, the Applicant stated that the delay to file an appeal was occasioned by sickness and ignorance of crucial procedures of the courts (he attached copies of hospital receipts). He also contended that he was supplied very late with the copies of judgment and decree which are necessary documents to file an appeal.

He submitted further that being a layman to court procedures the technicalities should not apply to him for the justice to be dispensed. Supporting his argument, he cited the case of **Ramadhan vs. M/S Haule and Company advocates (1996) TLR 71** where the court held that in cases where a layman who is unaware of the process of the machinery of justice tries to get reliefs before the court, procedural rules should not be used to defeat justice.

In reply, the Respondent started by notifying the court that this application is brought under a wrong provision of the law which cannot move this court to exercise its powers. He argued that since the case which is the subject of this application originated from Dabil Ward Tribunal, the law governing procedure and limitation or time of appeal is section 38(1) of the Disputes Courts Act, No. 2 of 2002. He submitted that by citing section 14 (1) of the

Law of Limitation Act, Cap.89 R.E. 2002, the Applicant failed to move the court properly and this application should be dismissed.

Responding on the reasons given by the Applicant in support of this application, he submitted that the Applicant did not establish a genuine reason to convince the court to exercise its discretionary powers of granting the application to file an appeal out of time. He cited the case of **Michael Leseni Kweka vs. John Eliyafye (1997) TLR 152** where it was held that the court has discretionary powers to grant the application where it is satisfied that sufficient or good cause has been adduced. He argued that the reasons given by the Applicant which are: failure to obtain a copy of judgment, proceedings and decree on time; sickness and ignorance of court procedures are not sufficient reasons for extension of time. He termed the grounds stated by the Applicant as frivolous and vexatious.

Responding on the ground that the Applicant did not file the petition of appeal on time because of lack of copy of judgment, proceedings and decree, he argued that this ground is baseless since the affidavit filed by the Applicant does not indicate that he wrote a letter requesting for a copy of judgment and proceedings. He submitted further that it is not a mandatory

requirement of the law for the petition of appeal to be accompanied with a copy of judgment and decree

Submitting against the grounds of sickness, he argued that according to the filed documents the Applicant was sick on 6/1/2020 and he was not admitted which means he was not too sick to file a petition of appeal. He argued further that the decision of DHLT was made on 11/11/2019 therefore the reasons of the Applicant's sickness is baseless as he was negligent to prepare his petition of appeal and to seek legal advice on time.

On the reason adduced by the Applicant that he is a layman and therefore was not aware about the crucial procedures of the law, he argued that this is baseless as it is clear that ignorance of law is not a defence. He argued that the Applicant misled himself by writing a letter to DLHT which was rejected. For those reasons he prayed for the court to dismiss the Misc. application No 5 of 2020 with costs for lack of legal merits, cause inconvenience to this honorable court.

In his brief rejoinder, the Applicant submitted that, section 14 (1) of Law of Limitation (supra) was rightly used and is applicable to move the court in

this application. He prayed for the Respondent's submission has to be dismissed for lack of merit and the application be granted.

I have given deserving consideration to the rival submissions from both parties. As rightly stated by the Respondent section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 being a general provision applicable in the absence of a specific relevant enabling provision, is not applicable in the present application as section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E 216 (Revised Edition 2002) specifically provides for the relief prayed for in this application.

In the foregoing, I find that the Applicant has cited a wrong provision of the law to move the court to extend time for filing an appeal. As the court has not been properly moved, the application is certainly incompetent. It is accordingly struck out with costs. In view of this, I find no pressing need to deal with the reasons for extension of time.

The Applicant is at liberty to institute a proper application.

The seal of the High Court of Tanzania, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and a circular border.
A handwritten signature in blue ink, appearing to read "K.M. Robert".
K.M. ROBERT
JUDGE
24/7/2020