

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. LAND CASE APPLICATION NO. 3 OF 2020

*(Originating from Land Application No. 237 of 2016 of the District
Land and Housing Tribunal for Ruvuma at Songea)*

**ALLY BURUANI MAPUNDA (As administrator of the late
Mbaraka Mohamed Fussi) APPLICANT**

VERSUS

LAZARUS ELENZIEL CHUMA 1ST RESPONDENT

LUCIA HERBERT NYONI 2ND RESPONDENT

Date of Last Order: 26/06/2020.

Date of Ruling: 17/07/2020.

RULING

I. ARUFANI, J

The applicant is seeking for leave to file an appeal in this court out of time prescribed by the law. The applicant wants to appeal against the decision of the District Land and Housing

Tribunal for Ruvuma at Songea (hereinafter referred as the tribunal) which was delivered in Land Application No. 237 of 2016 dated 31st July, 2019. The application is made under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E 2002 as amended by section 41 of the Written Laws (Miscellaneous amendments) Act No. 2 of 2016 and is supported by the affidavit of the applicant. The respondents opposed the application by filing in the court the counter affidavit affirmed by the first respondent.

Whereas the applicant was represented in the application by Mr. Augustino Mahenge, learned advocate, the respondents were represented by Mr. Eliseus Ndunguru, learned advocate. By consent of the counsel for the parties the application was argued by way of written submissions. The reason for the applicant to delay to lodge the appeal in the court within the period of time prescribed by the law as deposed in the affidavit of the applicant and argued in his submission is delay to get copy of judgment from the tribunal.

The counsel for the applicant stated in the submission of the applicant that, although the applicant applied to be supplied with the copy of judgment of the tribunal on 31st July, 2019 when the judgment was delivered but it was until 4th September, 2019

when the sought copy of judgment was supplied to him. He stated that, from when the judgment was delivered up to when its copy was supplied to the applicant about thirty five days had elapsed and he had remained with only ten days within which he was required to lodge his appeal in the court.

He stated that, as the applicant is just an administrator of the estate of the deceased he convened a meeting with other beneficiaries of the deceased to discuss about the process of appealing against the decision of the tribunal and raising fund of engaging an advocate to assist him to process the appeal. He argued that, when the applicant and beneficiaries of the estate of the deceased succeeded to engage an advocate they had remained with only three days within which to appeal which were not enough to prepare a sound memorandum of appeal.

The counsel for the applicant stated that, they prepared an application for extension of time which was filed in the court on 17th September, 2019 and registered as Misc. Land Application No. 32 of 2019 but it was struck out on 12th March, 2020 after being found it was defective. Thereafter they filed the application at hand in this court. He cited in his submission section 19 (2) and (3) of the Law of Limitation Act, Cap 89 R.E 2002 and the case of **Lewin Benard Mgala V. Lojasi Mutuka Mkondya**

and 2 Others, Land Appeal No. 33 of 2017 HC at Mbeya (unreported) and argued that, exclusion of the time spent in awaiting copy of judgment is not automatic but is subject to the leave of the court.

He also cited in his submission the case of **Mary Kimaro V. Khalfani Mohamed**, [1995] TLR 202 where it was held that, copies of proceedings and judgment are necessary documents for framing sound memorandum of appeal. He submitted that, delay of the applicant to appeal within the time prescribed by the law was not done by the applicant deliberately or negligently but due to delay to get copy of judgment from the trial court and prayed the court to grant the applicant leave to appeal out of time.

In reply the counsel for the respondents stated that, there is no dispute that the applicant applied for the copy of the judgment and he was supplied with the same ten days before the elapse of the time within which he would have filed the appeal in the court. He submitted that, as the applicant was supplied with all the necessary documents ten days before the elapse of time within which he would have filed the appeal in the court he was not diligent in pursuing his appeal within the time hence his delay was contributed by himself.

He stated that, it is not an option of either party to the dispute to calculate the time for filing some document in the court out of the time prescribed by the law. To bolster his argument he referred the court to the case of **Dr. Ally Shabhay V. Tanga Bohora Jamaat**, [1997] TLR 305 where it was held that, those who come to court must not show unnecessary delay in doing so, they must show diligence. He argued that, if a party has all necessary documents at hand a single day is enough for preparing and filing an appeal in the court. He argued that, if the court will grant the applicant extension of time is seeking from the court it will open pandora box for the people to decide the time of filing documents in the court instead of adhering to the time prescribed by the law.

He argued that, the issue of the applicant to sit down convening the family meeting has nothing to do with extension of time as the applicant had full mandate to deal with the matter as the administrator of estate of the deceased. He argued that, the issue of raising fund for payment of the advocate cannot be used to violate the procedures provided by the law. He argued further that, if the counsel for the applicant found the remaining three days for filing appeal where not enough for preparing a sound memorandum of appeal he was required to file in the court an

application for extension of time before the elapse of the said days. He stated that would have assisted the applicant to account for each day of the delay.

He referred the court to section 41 (2) of the Land Disputes Courts Act as amended by Act No. 2 of 2016 which states the application for extension of time can be filed in the court either before or after expiration of the time provided for filing the appeal in the court. He stated that, instead of the counsel for the applicant to file the application for extension of time within those three days he stayed with the documents on pretext that, three days were not enough to file the appeal in the court. He submitted that, always time is not enough that is why the law has set a time frame for everything required to be done under the law. Finally he prayed the application to be dismissed for want of sufficient reason to grant extension of time.

In his rejoinder the counsel for the applicant stated that, although the administrator of the estate of the deceased has power and mandate to deal with the best interest of estate of a deceased but that power and mandate is not absolute. He stated that, under certain circumstances involvement of beneficiaries of estate of the deceased is inevitable. He said things like costs of the appeal will bind all the beneficiaries and added that, it was

proper for the applicant to convene the meeting of the beneficiaries of the estate of the deceased to address them about filing of the appeal in the court as the judgment intended to be challenged affected their interest directly.

He went on arguing that, after going through the copy of the judgment of the case he realized that, the tribunal had no jurisdiction to entertain the matter hence he wanted time to go through the proceedings of the tribunal to know the value of the land in dispute as it was not stated in the judgment and there was no valuation report. He argued that, there is a doubt if the land measuring $\frac{3}{4}$ of an acre can have a value which is above Tshs. 3,000,000/= in the common market price at the area where the land is located. He reiterated his submission in chief that, the delay to file the appeal within the time was not done deliberately or negligently but because of waiting for the copy of the judgment. In fine he prayed the applicant to be granted extension of time to file the appeal in the court out of time.

The court has carefully considered the submissions from both sides and finds the issue to determine in this application is whether the applicant has been able to satisfy the court he was delayed by good cause to lodge his appeal in the court within the time prescribed by the law. The reason for framing the above

issue is because that is a prerequisite for granting extension of time sought under section 41 (2) of the Land Disputes Courts Act upon which the application at hand is made. For clarity purpose the proviso to the cited provision of the law states as follows:-

*"The High Court may for **good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty five days."* (Emphasis added)

The term "good cause" used in the above cited provision of the law is not defined in the Land Disputes Courts Act or any other law but our courts have tried to define it in numerous cases. One of the cases is **Omary Ally Nyamalege (as the administrator of the estate of the late Ally Nyamalege) and Two Others V. Mwanza Engineering Works**, Civil Application No. 94 of 2017, CAT at Mwanza (unreported) where when the Court of Appeal was looking into what constitute the term "good cause" used in Rule 10 of the Court of Appeal Rules, 2009 it stated as follows:-

"... The Court invariably considers factors such as the length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent,

whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged”.

The similar position was stated in the case of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) whereby the Court of Appeal of Tanzania stated as follows:-

*“Whilst it may not be possible to lay down an invariable definition of **good cause** so as to guide the exercise of the court discretion, the court is enjoined to consider, inter alia the reasons for the delay, the length of the delay, whether the applicant was diligent and the degree of prejudice to the respondent if time is extended.”*[Emphasis added].

That being what the court is required to consider in deciding whether the applicant in the application at hand was delayed by good cause the court has found that, as deposed in the affidavit of the applicant and argued by his learned counsel in his submission the causes of the applicant to delay to appeal within the time prescribed by the law are as follows:- One, he delayed to get the copy of judgment from the tribunal; Two, after getting the copy of judgment he convened a meeting of the beneficiaries

of the estate of the deceased to discuss about filing of appeal in the court and three, he was raising fund of paying advocate of representing him in the intended appeal.

Starting with the cause of delay to get the copy of the judgment from the tribunal the court has found as submitted by both sides and as stated earlier in this ruling it was undisputed fact that the impugned judgment was delivered on 31st July, 2019 and the applicant applied for its copy on the same date. It is also not disputed that the applicant was supplied with the copy of the judgment on 4th September, 2019 which is 35 days from the date of delivery of the judgment. Further to that it is also not disputed that as the period of time provided under section 41 (1) of the Land Disputes Courts Act is 45 days from the date of delivery of the impugned judgment the applicant had remained with 10 days within which he would have filed his appeal in the court.

The court has found the applicant deposed at paragraph 11 and 12 of his affidavit that, after being supplied with the copy of the judgment his advocate filed his first application for extension of time to file the appeal in the court out of time on 17th September, 2019. The said application which was registered as Misc. Land Application No. 32 of 2019 was withdrawn on 12th March, 2020 and caused the application at hand to be filed in the

court on 26th March, 2020. Under the stated series of events the court has found that, counting of the period of delay of the applicant to file the appeal in the court from when the tribunal delivered its judgment up to when the first application for extension of time was filed in the court you will find the first application was filed in the court after the elapse of 48 days. That means the applicant was late by three days as he was required to file the appeal in the court within 45 days from the date of delivery of the impugned judgment.

Despite the fact that the applicant was late by three days but as held by the Court of Appeal of Tanzania in the case of **Bushfire Hassan V. Latina Lucia Masanya**, Civil Application No. 3 of 2007 and followed in the case of **Mustafa Mohamed Raze V. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (both unreported) delay of even a single days is required to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken.

The court has considered the causes of the delay stated by the applicant that after being supplied with the copy of the judgment he convened a meeting of the beneficiaries of the deceased to discuss about filing of the appeal in the court and

raising fund of engaging an advocate of representing him in the matter but found as rightly argued by the counsel for the respondents those causes are not good causes for granting extension of time the applicant is seeking from the court. The court has arrived to the above finding after seeing that, the letter the applicant used to apply for the copy of the judgment from the tribunal annexed with his affidavit as annexure AM1 shows he made a decision to appeal against the judgment of the tribunal on the date when the judgment was delivered.

If he made a decision to appeal against the decision of the tribunal on the date when the judgment was delivered and he thought he was required to involve beneficiaries of the estate of the deceased in his intention to appeal what hindered him to convene the alleged meeting from the date he decided he would have appealed against the judgment of the tribunal and waited until when he was supplied with the copy of the judgment. The court has also found it is not only that the applicant has not stated why he didn't convene the alleged meeting earlier but there is no even a copy of the minutes of the meeting or any other evidence to prove there was a meeting which was convened. That make the court to find the ground of convening meeting of the beneficiaries of the estate of the deceased to

discuss about filing of the appeal in the court is not a good cause for granting extension of time the applicant is seeking from the court.

The court has also considered the cause of raising fund of engaging an advocate of representing the applicant in the matter and find it cannot be a sufficient cause to grant extension of time. The court has arrived to the above finding after seeing that, despite the fact that the tribunal stated in its judgment the applicant is a pauper but the issue of financial constraint has been considered in numerous cases decided by this court and the Court of Appeal of Tanzania and found is not a sufficient ground for granting extension of time. That position of the law can be seeing in the case of **Yusufu Same & Another V. Hadija Yusufu**, Civil Appeal No. 1 of 2002 cited in the case of **Wambele Mtumwa Shahame V. Mohamed Hamis**, Civil reference No. 8 of 2016 (both unreported) whereby the Court of Appeal of Tanzania held that, financial constraint is not a sufficient ground for granting extension of time.

To the view of this court all the steps of convening the meeting of the beneficiaries of the estate of the deceased and raising fund of engaging an advocate of representing him in the appeal were supposed to be done by the applicant from the time

he made up his mind that he wanted to appeal against the decision of the tribunal. There is no any reason given to the court as to why those steps were not taken from when the applicant made up his mind that he wanted to appeal against the judgment of the tribunal and waited until when he was supplied with the copy of the judgment of the tribunal.

However, although the court has found the ground of convening the meeting of the beneficiaries of the estate of the deceased and raising fund of engaging an advocate to represent the applicant in the matter are not sufficient grounds for granting extension of time to appeal out of time but the court has considered the length of the delay to file the application in the court which is a delay of only three days and find that is not inordinate delay which can make the court to fail to exercise its discretionary power to grant him extension of time is seeking from the court.

The court has arrived to the above finding after seeing that, although the applicant was required to account for each day of the delay but as stated in the cases of **Omary Ally Nyamalege** and **Bertha** (supra) cited earlier in this ruling the court is also required to consider the length of the delay and validity of the cause given for the stated delay. The court has come to the view

that, as there is no dispute that the applicant delayed to get the copy of the judgment from the tribunal the delay of three days is not inordinate delay which can justify the court to deny him extension of time. The above view of this court is being bolstered by the decision made by the Court of Appeal in the case of **Mpoki Lutengano Makabuta and Another V. Jane Jonathan**, Civil Application No. 566/01 of 2018, CAT at DSM (unreported) where the Court of Appeal found the delay of four days was not inordinate delay which would have not favoring grant of extension of time.

The court has considered the argument by the counsel for the respondent that, if the application will be granted it will open Pandora box but find that argument has no any persuasive value because each case is required to be decided on its own facts. In the premises the court has found that, as the delay of the applicant to lodge the application in the court is not inordinate and it has not been stated the respondent will be prejudiced if the application will be granted then under the circumstances of the matter it will be injustice to refuse to grant extension of time the applicant is seeking from this court.

In the light of all what I have stated hereinabove the court has found this is a proper case where it can exercise its

discretionary power to grant extension of time the applicant is seeking from this court. Consequently, the application is hereby granted and the applicant is given twenty one (21) days from the date of delivery of this ruling to lodge his appeal in the court and each party to bear his own costs. It is so ordered.

Dated at Songea this 17th day of July, 2020.



I. ARUFANI

JUDGE

17/07/2020

Court:

Ruling delivered today 17th day of July, 2020 in the presence of the applicant in person and represented by Mr. Augustino Mahenge, Advocate and in the presence of Mr. Nestory Nyoni Advocate for both respondents. Right of Appeal is fully explained.



I. ARUFANI

JUDGE

17/07/2020