

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOSHI DISTRICT REGISTRY)**

AT MOSHI

MISC. LAND APPLICATION NO. 45 OF 2020

(Originating from Application No. 21 of 2015 in the District and
Housing Tribunal for Same at Same)

MOHAMED MAGIRI APPLICANT

VERSUS

JANI KIBACHA SINGO (As Legal Representative of

Mohamed Kibacha SingoRESPONDENT

RULING

MUTUNGI .J.

The applicant is seeking for orders as hereunder: -

- (1) That, the Honourable Court be pleased to grant extension of time for the applicant to file an appeal out of time.
- (2) Any other relief(s) the court deems fit to grant.

The same is made under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. Mr. David Ringo learned advocate giving a brief background, did submit that the applicant had already knocked at the doors of this court by

filing an appeal herein but the same was withdrawn after discovering that it had been filed out of time. After such discovery, the applicant quickly filed the instant application. Had he delayed in doing so, he would have been caught in the web of the doctrine of Res-judicata. The learned counsel cited the case of **Elia Maringo vs. Glory Lucas Musoka, Misc. Land Appeal No. 19/2018 (unreported)** in support thereof.

The learned advocate elaborated further that, what they needed to do is simply to advance and demonstrate sufficient causes in pursuit of this application. He called upon this court to go through the case of **Wambura Warioba vs. Principal Secretary Ministry of Finance and A.G. No. 2025/2019 (CAT)** to find what amounts to sufficient or good cause. On the same footing the sufficient cause in this application would be, the delay by the trial tribunal to supply the appeal documents on time. The applicant had gone out of his way and applied for the same well in good time but he received the same on 3/7/2020. The court was invited to the case of **Tanzania-China Friendship Textile Ltd vs. Civil Application No. 62/2015 (CAT-unreported)**, where the Supreme Court of this land faced the same scenario. The applicant's fast move of applying for the requisite copies was

a gesture of due diligence as found in the case of **Balwantarai dbhatt vs. Tejwan Singh and another [1962) E.A 497.**

Automatically the length of delay was not inordinate given the conduct of the applicant. The applicant received the relevant copies on 3/7/2020 (a Friday) and on the following Monday (6/7/2020) the learned advocate filed the said appeal. Considering that they only had a weekend, coming before the court on Monday they were comfortable and certain that, they were well within time.

It is when they were preparing for hearing on 27/7/2020 that they discovered they were out of time and in order to remedy the situation, they immediately filed the present application. In that regard, the delay was not inordinate. The learned advocate cited the cases of **Mpoki Lutengano Mwakabuta and Frida Vumilia Kessy vs. Jane Jonathan, Civil Application No. 5666 of 2018 (CAT-DSM), NB Business Ltd vs. Amos Kasanda and others, Civil Application No. 48/2015 (CAT-DSM)** and **Michael Hassan Kweka vs. John Eliamtei [1997] TLR 152.**

In the upshot the applicant's advocate prayed to the court

to find, the applicant had acted promptly, diligently and reasonably which constitutes a good and sufficient cause to grant the extension sought.

In reply thereto Miss Jane James representing the respondent strongly argued that, the applicant seems to put the blame for his inaction on the trial tribunal. The advocate essentially referred to the fact that, it is not disclosed when the appeal documents were ready for collection. There is no such evidence and the Applicant had failed to attach a receipt and the decree does not bear the date when it was issued. The applicant claims he was issued with the appeal documents on 3/7/2020 yet the pleadings reveal he instituted the instant application on 27/7/2020 which is about 24 days later. Such delay has not been accounted for. The counsel supported her words by citing the case of **Finca Ltd and another vs. Boniface Mwalukile, Misc. Application No. 587/12 of 2018 (CAT-Iringa) unreported.**

Reacting to the purported filed appeal, it was submitted that the court has not been furnished with such proceedings. Be as it may, filing a wrong case is not a sufficient reason. The applicant's advocate in that regard acted with gross

negligence. The respondent's advocate reminded the applicant's counsel the famous legal maxim that ***"he who comes to court must come with clean hands."***

Further that the applicant's counsel had committed a gross professional misconduct by first filing an appeal then filing an application for extension of time in the same court at the same time. Advocates are not allowed to go to a forum shopping spree. It is in view of the foregoing submission that, the respondent's advocate concluded by praying before the court to dismiss the application for lack of merits.

In rejoinder, the applicant's counsel prayed that the record bears them out and the court should find that, the delay was caused by the trial tribunal, the grounds upon which the extension lies have been sufficiently proved and the application be granted.

What then is before this court? The record speaks loud that, what is being sought is extension of time and in this case it's time to file the applicant's intended appeal. Borrowing leaf from the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**

(unreported), the court, while acting on its jurisdiction under **section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019**, has to exercise its discretional powers.

The test therefore is the length of delay; whether it has been explained away, diligence on the part of the applicant as opposed to negligence or sloppiness and whether or not there is illegality in the decision sought to be impugned. In doing so I will go by the details in the supporting Affidavit. It is clear from paragraph 3 of the Affidavit, the decision to be challenged was delivered on 21/5/2020. In the subsequent paragraphs it is stated immediately on the same day (21/5/2020) the applicant requested for copies of the appeal documents and the applicant has attached the same to the application. Further the requisite documents were issued on 3/7/2020 as evidenced by the proceedings attached which were issued on 3/7/2020 and the decree was certified on 3/7/2020. Counting from 21/5/2020 then the 45 days were to expire on 5/7/2020 but the applicant alleges he came to file his intended appeal on 6/7/2020 which was a Monday immediately after receiving the documents on 3/7/2020 (Friday). He later discovered that they were already out of time by a day so, immediately after the realization that he

was out of time, the appeal was withdrawn on 24/7/2020 and they filed the present application seeking for the extension.

I am alive with the requirement for the applicant to account for each day of delay which has been over emphasized at different times by the Apex Court of this land among which is the case of **Bushiri Hassan vs. Latifa Mashayo, Civil Application No. 2 of 2007 (unreported)**.

In view thereof starting from the time the matter was finalized, the applicant requested for his copies immediately on the same day. He should be commended for the quick steps he took but was pulled back by the tribunal which issued him the copies on 3/7/2020. I have visited the calendar and observed indeed as alleged by the applicant 3/7/2020 was a Friday and whichever way it is looked at, the appeal time was to expire on 5/7/2020 which was a Sunday but still the applicant managed to file his appeal on 6/7/2020 as per paragraph 8 of the Affidavit. In my settled view what needed to be accounted for was the period from 21/5/2020 to the time he received the appeal documents on Friday 3/7/2020.

The applicant has further deponed in the Corresponding Affidavit that as he waited for their appeal to be called on in

court, it appeared to them that the same was out of time and immediately on 24/7/2020 they lodged this application. Since there are words given under oath, the applicant is given a benefit of doubt and found that despite going the wrong route unintentionally the steps taken were very quick. Justice demands that good reason should be employed in such a scenario after the diligent steps taken in pursuit of the applicant's rights.

The respondent's counsel had pressed upon the court to find that, there was no proof when the appeal documents were supplied but I have already endeavored to give the answer to this aspect. She also faltered the applicant's counsel for not proving that they had mistakenly filed an appeal out of time which was beyond their control. On this the court finds even though the same should be considered which the court has done, but finds was justified and the period of delay in the given circumstance was not inordinate.

In the event, it is concluded that, the applicant has illustrated sufficient or reasonable causes to entitle him the extension of time sought. This application is consequently granted and the

applicant to file his intended appeal within 21 days of delivery of this Ruling. Each party to bear own costs.



B. R. MUTUNGI

JUDGE

23/10/2020

Ruling read this day of 23/10/2020 in presence of David Ringo for the applicant, the respondent in person and Mr. Emmanuel Karia holding brief for Miss Jane James for the respondent.

B. R. MUTUNGI

JUDGE

23/10/2020

RIGHT OF APPEAL EXPLAINED.

B. R. MUTUNGI

JUDGE

23/10/2020