

**IN THE HIGH COURT OF TANZANIA**

**IRINGA DISTRICT REGISTRY**

**AT IRINGA**

**MISC. LAND APPLICATION NO. 37 OF 2018**

(From the decision of the Iringa District Land and Housing Tribunal, in  
Land Application No. 61 of 2012)

**RASHID CHALOLOMA MWANGAYEKA ..... APPLICANT**

VERSUS

**FARAJI ABDARAHAMANI MHEDE.....RESPONDENT**

**RULING**

**KENTE, J.:**

This is an application for extension of time within which to lodge an appeal. The applicant Rashidi Chaloloma Mwangayeka is dissatisfied with the decision of the Iringa District Land and Housing Tribunal in its Land Application No. 61 of 2012 which was handed down on 27<sup>th</sup> July, 2018.

Aggrieved by the above-said decision of the District Land and Housing Tribunal, on 7<sup>th</sup> August, 2018 the applicant wrote a letter to the Chairman of the Tribunal (annexture S-1 to the affidavit) requesting to be issued with copies of proceedings, judgment and decree of the trial Tribunal. On the 10<sup>th</sup> September 2018 he wrote a reminder but he was

finally issued with the said documents on 9<sup>th</sup> October 2018. Having realized that the prescribed period within which to appeal had since expired; the applicant has now preferred the present application.

The applicant has given only one reason in his endeavour to account for the delay to appeal within the prescribed period. He has thrown the whole burden onto the trial District Land and Housing Tribunal for allegedly having delayed to issue him with the copy of proceedings, judgment and decree as to result into his being out of time to appeal.

With due respect to the applicant together with Mr. Nganga his learned counsel, I do not agree with them. The stance of the law on all cases of the present nature is as clearly as stated in the case of **Bruno Wenceslaus Nyalifa V. The Permanent Secretary, Ministry of Home Affairs and Another, Civil Appeal No. 82 of 2017, Court of Appeal of Tanzania at Arusha** (unreported) to which I was ably referred by Mr. Kingwe learned counsel for the respondent. In granting or refusing to grant an application for extension of time the court is enjoined to exercise its discretion along with the following guidelines:-

- a) *The applicant must account for all the period of the delay.*
- b) *The delay must not be inordinate.*

- c) *The applicant must show diligent and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take.*
- d) *If the court feels that there are sufficient reasons, such as the existence of point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

As can be gleaned from the above stated guidelines, the law places the onus on the applicant in any case of the present nature to prove on a balance of probability that he was always on the lookout and time conscious as not to have himself contributed to the delay which is sought to be explained away.

On the facts of the case before me, I find that the applicant has not accounted for the nine days that elapsed from 9<sup>th</sup> October 2018 when he was issued with the requisite documents to the 22<sup>nd</sup> October 2018 when he finally lodged the present application. In other words the applicant stayed idle for another nine days without taking action after he was issued with the documents that were necessary for appeal purposes. In saying this I am guided by and I totally subscribe to the decision of the Court of Appeal of Tanzania in the unreported case of **Finca (T) Limited and Kipondogoro Auction Mart V. Boniface Mwalukisa, Civil Application No. 589/12 of 2018** where it was held, *inter alia* that, delay

of even as single day, has to be "accounted for otherwise there would be no proof of having rules prescribing periods within which certain legal steps have to be taken.

It is upon the above reasons that I find that the applicant has fallen short of explaining away the delay to appeal within the prescribed time-frame. In the final event and for the above-stated reasons, the application is found to have no merit and is consequently dismissed with costs.

It is so ordered.

Dated at Iringa this 27<sup>th</sup> day of October, 2020.



**P.M. KENTE**  
**JUDGE**

