

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISCELLANEOUS LAND APPLICATION No 52 OF 2020**

*(Arising from Land Application No 36/2016 from District Land Housing Tribunal Musoma)*

**NYIRABU GETUNGUYE.....APPELLANT**

**Versus**

**CHACHA WAMBURA ..... RESPONDENT**

**RULING**

*4<sup>th</sup> & 20<sup>th</sup> November, 2020*

***Kahyoza, J.***

**Nyirabu Getunye** sued **Chacha Wambura** before the District Land and Housing Tribunal (**DLHT**) for trespass, in 2016. **Chacha Wambura** won the case. Aggrieved, **Nyirabu Getunye** filed an application for revision vide Land Revision No. 14 of 2017 before this Court-Mwanza District Registry. The High Court (**Matupa J.**) struck out the application. **Nyirabu Getunye** knocked again the door of this Court by filling an application titled Land Revision, which was an application for extension of time to file revision. The Court (**Gareba J.**) struck out the application on the account that the application was misconceived. The applicant sought extension of time to file an application for Revision a remedy not available for her. The remedy available for her was to appeal.

**Nyirabu Getunye** instituted the instant application seeking for extension of time to appeal against the decision of the **DLHT**.

**Nyirabu Getunye** instituted the application and served the respondent. The respondent filed a counter-affidavit. The application was heard orally. The parties had no any substantive submission. I relied on the affidavits to determine the application.

**Has the applicant adduced good cause for delay?**

It is trite law that a person applying for extension of time must exhibit sufficient cause for delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227, where the Court of Appeal held that-

*"...an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"*

The applicant's reasons for delay are stated in paragraph 3, 4, 5, and 6 of her affidavit supporting the application. The grounds for delay are; **one**, she was sick. She attended hospitals for treatment and she was admitted twice. She supported her averment with documents, the discharge sheet issued by Mwananyamala hospital and Bugando hospital; **two**, financial constraint; and **three**; lack of legal assistance.

The issue is whether the applicant has adduced good causes for the delay. The Court's power to grant applications of this nature is discretionary. Reference can also be made to the decision of the court of appeal in **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011 (unreported) which was cited in **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 at page 19, it was stated thus-

*"In considering an application under the rule, the courts may take into consideration, such factors as, the length of delay, the*

*reason for the delay and the degree of prejudice that the respondent may suffer if the application is granted."*

One of the applicant's reasons for delay was that she was sick. At first, she was admitted on 14/07/2017 and discharged on 21/07/2017 at Mwananyamala hospital. Later, the applicant fell sick and got admitted at Bugando hospital on the 2/6/2020 and discharged on the 8/6/2020. The DLHT gave its judgment on 28/04/2017. The applicant had forty-five days after the date of hearing to file her appeal, instead she filed an application for revision, which this Court struck out on 18/09/2018. The reason for striking out is not clear. I am at cross-roads on how the applicant was prevented by sickness to appeal on time. The applicant left this Court to guess and fill the gap.

The applicant put forward financial constraint as another reason for delay. She deposed that she had financial means to pursue an appeal. It is an established principle of law that financial constraint is not sufficient reason for the extension of time. See **Yusuph Same and Hawa Dada V Hadija Yusuph** Civil Appeal No 01 of 2002 it was held;

*"We are aware that financial constraint is not sufficient ground for extension of time"*

The applicant adduced her last ground for delay, that she lacked proper legal assistance. This reason too is baseless. The applicant ought to have consulted legal aid schemes available or use the same means she deployed to institute the application before the **DLHT**. Also, there are unlimited number of advocates available to offer legal opinion, of course at a fee. It may be that she had no means to hire them. Should that be the case, yet that ground would not support the application for extension of time. It has been pointed out above that financial constraint is not a good reason for delay.

To say the least, the applicant has adduced no sufficient reason to move me to grant the application for extension of time. However, the applicant's account of her story revealed that she has been in the Court's corridors for so many times. The respondent admitted this fact. The respondent deponed and submitted that the applicant has brought him to court four times. The applicant filed matters before this Court, which the Court struck out. The applications were misconceived. The Court of Appeal in **William Shija and another v. Fortunatus Masha** [1997] TLR 213 stated that a distinction has to be made between real delay and technical delays. Real delays do not account for delay but technical delays do. It stated-

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."*

It is trite law that an application for extension of **time is entirely in the discretion of the court to grant or refuse it**. This discretion however, has to be exercised judiciously and **the overriding consideration is that there must be sufficient cause for so doing**. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly; the

*absence of any or valid explanation for the delay; lack of diligence on the part of the applicant. See **Dar es Salaam City Council v. Jayantilal P. Rajani** - CAT Civil Application No. 27 of 1987 (unreported), and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda** – Civil Application NO. 6 of 2001 (unreported).*

It is very vital when determining whether the applicant has adduced sufficient or good cause to take into consideration the circumstances of each case. The term good cause is a relative one and is dependent upon circumstances of each individual case. It is therefore, upon the parties to provide the **relevant material in order for the court to exercise its discretion**. See the cases of **Ratnam v. Cumarasamy and Another (1994)** ALL ER 933 and **Regional Manager Tan Roads Kagera v Ruha Concrete Company Limited** Civil Application No. 96 of 2007 CAT (Unreported). Judge Bowen once remarked that courts do not exist for sake of punishing the parties but they exist to decide disputes. The observation was made in **Cropper V Smith** 1884) 26 CL. D 700 pg 710 by Lord Bowen as follows-

*"it is a well-established principle that the object of Courts is to decide the rights of the parties not to punish them for mistakes they made in the conduct of their cases by deciding other than in accordance with their rights. I know of no kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct, **if it can be done without injustice to the other party**. Courts do not exist for the sake of discipline but for the sake of deciding matters on controversy."*

Before, I rest my case, let me point out that I was persuaded by the holding of the High Court of Kenya in **Robert Walusekhe Wasikana v John Dianga Obaso (Suing as Guardian Ad Litem of**

**Samuel Awour Tongo**) [2016] eKLR, while attending an application akin to this one, that-

***"Disputes concerning land are deep seated and emotive, and as such should be ventilated, heard and determined conclusively"*** (Emphasis supplied).

Given the circumstances of this case, the applicant went to the High Court twice and on both occasions her applications were thrown out on technical ground and having in mind that **the dispute concerns land which ought to be ventilated, heard and determined conclusively**, I find that the applicant has adduced sufficient reasons for delay.

The application is allowed, time is extended for 30 days within which the appeal must be lodged. Costs shall be in due course.

It is so ordered.





**J.R. Kahyoza**

**JUDGE**

**20/11/2020**

**Court:** Ruling delivered in the presence of the parties. B/C Catherine.

**J.R. Kahyoza**  
**JUDGE**  
**20/11/2020**