

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[DISTRICT REGISTRY OF ARUSHA]
AT ARUSHA

MISC. CIVIL APPLICATION NO. 9 OF 2020

(Originating from the decision of the District Land and Housing Tribunal for Manyara at Babati, Application No. 37 of 2019)

JOSEPH MARGWE APPLICANT

Versus

JOSEPHINE SHIJA RESPONDENT

RULING

14th September & 9th October, 2020

Masara, J.

Joseph Margwe, the Applicant herein, has brought this application praying for extension of time to file appeal against the ruling delivered by District Land and Housing Tribunal for Manyara at Babati (the Tribunal) on 10th December, 2019. The Applicant rented a house to the Respondent. The Respondent delayed in paying rent. When required to vacate the suit premise, the Respondent refused. The Applicant filed an application before the Tribunal. The Respondent herein filed a Preliminary Objection that the application was incompetent for failure to disclose cause of action and that the application was incurably defective for want of proper verification clause. The Tribunal Chairman overruled the Preliminary Objection but went ahead to struck out the application *suo motu* for failure of the Plaintiff to disclose the cause of action against the Respondent and for non-joinder of a necessary party. The Applicant was dissatisfied with the said decision and wrote a letter intending to appeal.

According to the affidavit in support of the application, the Applicant made several efforts in the endeavour to be supplied with copies of ruling and drawn order so as to file his appeal in time but those documents delayed until 28th January, 2020 when he was issued with the drawn order. On 3rd February, 2020, the Applicant filed this application.

The Application is supported by the affidavit sworn by the Applicant. The Respondent contested the application by filing Counter Affidavit which was sworn by herself. Both parties appeared in court in person, unrepresented. Hearing of the application proceeded through written submissions.

In his written submissions, the Applicant adopted and sought reliance on his affidavit in support of the application. He argued that the main reasons for the delay to file the appeal are that the copies of the drawn order and the copy of ruling and proceedings were delayed to be supplied to him despite several letters that he wrote. He added that such documents are very crucial in filing appeals originating from the District Land and Housing Tribunal citing Order XXXIX Rule 1(1) of the CPC. He also cited the cases of ***Yusufu Mutambo and Others Vs. Moezalidina*** [1985] TLR 145 and ***H. J. Stanley & Sons Vs. Ally Ramadhan Kunyamale*** [1998] TLR 250 to support his argument.

The Applicant stated that he applied for the copies of the ruling and drawn order on the very same day the ruling was delivered. He was not availed with a copy until 22 January, 2020 when he was supplied with a copy of the ruling but without the drawn order or proceedings. He was supplied

with the defective drawn order on 27th January, 2020. He wrote another letter reminding the chairman to rectify the anomaly and the same was rectified and he was given the rectified drawn order on 28th January, 2020. The Applicant fortified that delay to be supplied with the drawn order and ruling has been accepted by courts as good cause for the delay. He referred to the case of ***Mary Kimaro Vs. Khalifan Mohamed*** [1995] TLR 202.

The Applicant also alleged that the ruling delivered by the Tribunal chairman is tainted with illegalities which require interference of this Court so as to cure those illegalities. One of the illegalities he pointed out is that they were condemned unheard and the other one is non-joinder of a party which cannot act to defeat the suit. He stated that illegality amounts to a good cause in applications for extension of time. He cited the decisions in ***Kalunga and Company Advocates Vs. National Bank of Commerce Ltd*** [2006] TLR 235 and ***Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambhia*** [1992] TLR 185. The Applicant prays that the application be granted as he has proved good cause.

Contesting the application, the Respondent faulted the allegation by the Applicant. He argued that it was not true that the Chairman struck out the application on his own motion without affording the parties the right to be heard. He submitted that the Applicant did not disclose the cause of action and also both parties claimed to have bought the suit premises therefore the Applicant ought to have joined the seller as a necessary party. In his

view, the fact that they filed written submissions, they were both heard and therefore the allegation that they were not heard is baseless.

The Respondent also faulted the allegation by the Respondent that he was delayed to be supplied with the requisite copies of ruling and judgment reasoning that copies of judgment and rulings/decrees are supplied within fourteen days, therefore the Applicant's ruling which has two pages and the one page drawn order could not have taken the days alleged by the Applicant. The Respondent also stated that she has never been supplied with the copies of the letters of the Applicant requesting for the requisite appeal documents.

The Respondent further submitted that the Applicant has not established any ground that that will invite the intervention of the Court since the delay was caused by the Applicant himself. He also denounced the Applicant's memorandum of appeal contending that there is nothing serious to entertain since the parties were afforded the opportunity to be heard.

I have thoroughly considered the written submissions of both parties and their respective affidavits. The pertinent issue for consideration is whether the delay in filing the appeal was necessitated by sufficient cause to warrant the prayer for extension of time to appeal to this Court. The law is settled that that sufficient cause for the delay is *conditio sine qua non* for the application for extension of time to be granted. The power whether to grant the application or deny it is discretionary but courts have been urged to exercise that discretion judicially. There is a litany of authorities to that

effect. The Court of Appeal in ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported), stated;

"As shown in the bold expression in the section above, the Court will only exercise its discretion in favour of an Applicant only upon showing good cause for the delay. What amounts to good cause cannot be laid by any hard and fast rules but is dependent upon the facts obtaining in each particular case."

In ***Stanzia Stanley Kesy Vs. Registered Trustees of Agricultural Inputs Trust Fund and 3 Others***, Civil Application No. 46 of 2005 (unreported), the Court of Appeal held;

"In invoking the provisions of rule 8 of the Court Rules, 1979 the guiding principle in granting extension of time limited by the rules or any other law is for the court to be satisfied that sufficient cause has been shown for the delay. In this case, the issue is whether sufficient cause had been shown for the delay in filing the notice of appeal."

See also; ***The Principal Secretary, Ministry of Defence and National Service Vs. Devram P. Valambhia*** (supra); ***Blue line Enterprises Ltd Vs. East African Development Bank***, Misc. Civil Cause No. 135/95; ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 (unreported) and ***Alison Xerox Sila Vs. Tanzania Harbours Authority***, Misc. Civil Reference No. 14 of 1998 (All unreported)

In the application at hand, the Applicant, under paragraphs 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the affidavit in support of the application, contend

that the delay was prompted by the fact that the appeal documents such as the ruling and drawn order were availed to him late; to be exact, on 22nd and 28th January, 2020 respectively. The impugned ruling was delivered on 10th December, 2019 and on the very same date he wrote a letter requesting for the requisite appeal documents. He kept on reminding the office of the Tribunal chairman as well as the Tribunal Registry, but in futile. After he received the last document on 28th January, 2020, he filed the instant application on 4th February, 2020.

As correctly pointed out by the Applicant, an appeal against the decision of the District Land and Housing Tribunal in the exercise of its original jurisdiction has to be accompanied by the decree/drawn order and the judgment or order sought to be challenged. In computing time, the time to file appeal against the decision of the District Land and Housing Tribunal is 45 days from the day the impugned decision was delivered. However, section 19(2) of the Law of Limitation Act, Cap 89 [R.E 2019], mandates courts to exclude the time a party spent in obtaining the requisite copy of decree or order sought to be challenged in computing time. The case of ***The Registered Trustees of the Marian Faith Healing Center @Wanamaombi Vs. the Registered Trustees of the Catholic Church Sumbawanga Diocese*** Civil Appeal No. 64 of 2006 (unreported) is instructive in this aspect, as the Court of Appeal observed;

"In view of what we have endeavored to show above, and in the light of section 19(2) (supra), it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time. Once

that period was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred."

The impugned ruling was delivered on 10th December, 2019 and the drawn order was issued to the Applicant on 28th January, 2020. Therefore, the period between 10th December 2019 and 28th January, 2020 is excluded in computing time. This suffices to hold that the Applicant was not time barred when he filed this Application on 4th February 2020. As stated by the Applicant, delay occasioned by the delay to be supplied with the requisite documents of appeal serves as good cause. In ***Mary Kimaro Vs. Khalifan Mohamed*** (supra) the court observed;

"The appellant cannot in the circumstances be held to be responsible for the delay in obtaining the copy of proceedings from the lower appellate Court. It is the lower appellate court which has contributed to such delay"

Squarely, the Applicant in this application cannot be held responsible for the delay considering the efforts he showed to ensure that the appeal documents are availed to him within time. He was in fact delayed by the Tribunal.

Again, the Applicant stated in paragraph 16 of the affidavit in support of the application that there is an illegality sought to be cured by this Court in the intended appeal. He named such illegality as failure of the Tribunal to accord the parties the right to be heard. This relates to the concern raised by the court *suo motu* that there was non-joinder of the necessary party. Illegality on the intended appeal is one of the factors to be taken into account in applications for extension of time. The case of ***Kalunga and***

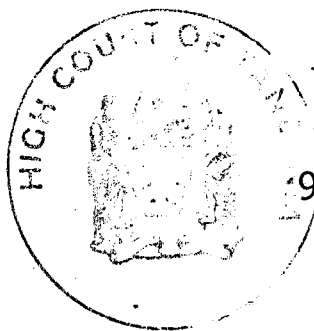
Company Advocates Vs. National Bank of Commerce Ltd (supra) is instructive in this aspect where the Court of Appeal observed:


"Since the point at issue is one alleging the illegality of the decision being challenged i.e the validity of the High Court's decision in interpreting a statutory provision and the propriety of a judge raising an issue suo motu, and making a decision without the parties concerned being heard upon it, sufficient reason has been shown for granting an extension of time to file application for leave to appeal to the Court of Appeal"

I have taken into consideration the fact that the Applicant's delay to file appeal to this Court, if any, was necessitated by the trial Tribunal's failure to supply to him the requisite appeal documents. I also hold that the days utilised in getting the said copies are excluded from computation of limitation period. Further, I have taken into consideration the fact that the decision sought to be challenged may have an illegality which this Court is enjoined to determine in an appropriate forum. For those reasons, I am inclined to agree with the Applicant that the delay in filing appeal to this Court was necessitated by sufficient cause.

Consequently, I allow the Application and order the Applicant to file the intended appeal to this Court within 21 days from the day of this Ruling. Each party to bear their own costs for this application.

Order accordingly,




Y. B. Masara

JUDGE

9th October, 2020