

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

MISC. LAND APPLICATION NO. 12 OF 2020

(C/F Land Application No. 109 of 2017 Moshi District
Land and Housing Tribunal)

JULIUS .L. LYIMO ----- APPLICANT

VERSUS

ANOLD SHIRIMA ----- 1ST RESPONDENT

DAINES A. KAWISHE ----- 2ND RESPONDENT

RAPHAEL M. MATERU ----- 3RD RESPONDENT

RULING

MUTUNGI .J.

The essence of filing this chamber summons made in terms of Section 41(2) of the Land Disputes Act, No. 2 of 2002 as amended, 2016 is for the Applicant to pray for the following;

- (1) That, this honourable court may be pleased to extent/enlarge time within which to file an appeal out of time against Land Application No. 109 of 2017 originating from the District Land and Housing Tribunal for Moshi at Moshi.
- (2) Any other relief(s) the honourable court may deem fit

and just to grant.

When the application was called upon in court it was ordered that the same be disposed by way of written submissions. The Applicant dully represented by Joseph Masanja first and foremost prayed to adopt the corresponding Affidavit in support of the application dully deponed by one Emmanuel Pascal Karia, Advocate. Further that, the Applicant who coincidentally was the Applicant in Land Application No. 109 of 2017 before the Moshi District Land and Housing Tribunal emerged the looser and as would be expected he intended to file an Appeal before this court to challenge the trial tribunal's decision. As a result on 10/12/2019 he requested for appeal documents but it was not until 4/2/2020 that he was availed the same. He realized he was already out of time, despite the serious follow up of these documents.

The learned advocate expounded further that, it is trite law in our jurisdiction when a party wishes to lodge an appeal should accompany the same with the requisite appeal documents. He referred the court to the case of **Elias Salagani V. Njegene Ngalu, Civil Application No. 5 of 2005 (unreported)** to support his stance. He called upon the court

to invoke its discretionary powers to grant the Applicant extension of time to file an appeal out of time since he has in the application demonstrated reasonable or sufficient cause for the delay as was laid down in the case of **Daphine Parry V. Murray Alexander Carson (1963) E. A. 546** and in **Musa and Another V. Wanjiru and another (1970) E. A. 481**.

In conclusion the learned counsel pleaded that, in the event time is not extended to the Applicant he would in the end suffer irreparable loss. This is the very reason that the application should be granted.

On the other side of the coin, the Respondents who enjoy the legal services of Mr. Gideon Mushi responded by first praying to adopt the respondents' joint Counter Affidavit. He went on to state that, the major reason as submitted by the Applicant's counsel is the delay of supply of copies of Judgment and decree by the trial tribunal which in his settled opinion does not amount to a sufficient reason. The Applicant has failed to avail the court with material on which the court can exercise its discretion. In support thereof he cited the cases of **Barenga Mungozi V. Mary Ntunzwe [2002] TLR 141, Regional Manager Tanroads Kagera V. Ruaha Concrete Co. Ltd, Civil Application No. 97/2002 (CAT-Arusha)**

and Godwin Ndewezi and Karoli. Ishengoma V. Tanzania

Audit Corporation [1995] TLR 2002. He went on to explain the decree subject of this application was delivered on 25/12/2019 and the applicant was to appeal within 45 days thereafter hence the deadline would have been 25/1/2020.

If one goes through the record will find, the Applicant filed this application on 5/2/2020 which was a delay of eleven days which the Applicant has not accounted for. The law demands that each day of delay should be accounted for as amplified in the cases of Daudi Haga V. Jenita Abdon Machatu, Civil Reference No. 1/2000 and the case of Ernest Chura V. O Bray John Ishanzi Misc. Land Application No. 90/2018 (HCT – Moshi) unreported), Lyamuya Construction Company Ltd. V. The Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2/2010 (CAT – Arusha). That being the case the learned counsel concluded, the application is devoid of merit and should be sanctioned to a dismissal with costs.

In rejoinder, the Applicant's counsel submitted that for any meritable Appeal, certified copies of Judgment and decree are an integrate part of the whole process and are to be attached to the petition of appeal. Once again the

Applicant's counsel humbly prayed that, the Applicant has not been sitting idle and has shown sufficient reasons to warrant the extension sought.

Having summarized as above, the pertinent issue to be resolved by this court is whether the Applicant has advanced sufficient grounds for the court to exercise its discretion. In other words the applicant must show reasonable or sufficient cause of delay.

Further, it is common knowledge in our civil jurisprudence that, in granting extension of time the court should do so while exercising its discretion taking into consideration the material put before it. The same was amplified in the case of **Alliance Insurance Corporation Ltd V. Arusha Art Ltd, Civil Application No. 33 of 2015 CAT (Unreported)** where the apex court held,

“Extension of time is matter of the court and that the applicant must put material before the court which will persuade it to exercise its discretion in favour of an extension of time”.

In this application the Respondent's advocate has pressed upon the court that the Applicant has not put such material before the court. What then is the material before this court.

Glancing through the corresponding Affidavit, the court is informed as per paragraph 3 that;

“The Applicant aggrieved by the decision of the honourable trial tribunal of 10th December, 2019 wrote a letter requesting to be availed with the Judgment and proceedings so as could use them to appeal before your Honourable Court”.

The said letter dated 27/12/2019 is attached marked “A” which clearly was dully received by the trial tribunal. The court has also observed that the requisite documents were certified on 29/1/2020 which means that this is when they were ready for collection. The record further reveals, the Applicant after seven days. i.e. on 5/2/2020 he filed this application.

Having considered the circumstances pertaining in the scenario at hand as above, it is obvious the Applicant had showed diligence in the action that he had intended to take after the trial tribunal had delivered its decision. Thereafter upon receipt of the said documents he immediately after a preparation of seven days filed his application in this court. One can safely say that, he had met some of the test that amount to sufficient reasons as laid down in one of the most

celebrated case of **Lyamuya construction Company Ltd V.**

Board of Trustees of Young Women's Christian Association of

Tanzania where the test is as hereunder: -

- (a) The Applicant must account for the period of delay.
- (b) The delay should not be inordinate.
- (c) The Applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take.
- (d)

(Emphasis mine)

In the upshot I find the application has merits and the same is accordingly granted. The intended appeal is to be filed within fourteen (14) days from the date of delivery of this ruling.


B. R. MUTUNGI

JUDGE

9/7/2020

Read this day of 9/7/2020 in presence of Mr. Gideon Mushi for the Respondent, 1st Respondent and in absence of the Applicant dully notified.

RIGHT OF APPEAL EXPLAINED.