

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
MISC. LAND APPLICATION NO. 45 OF 2018  
(From the decision of the District Land and Housing Tribunal  
for Mbeya in Land Application No. 153 of 2010)**

**LEONARD KAWANA.....APPLICANT**

**VERSUS**

**DEUS ANDREW.....1<sup>ST</sup> RESPONDENT**  
**MKONGOZI NGOGO.....2<sup>ND</sup> RESPONDENT**  
**AIZINI SANGA.....3<sup>RD</sup> RESPONDENT**  
**JUMA PASCHAL.....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

***Date of last order:***     04/09/2020

***Date of Ruling:***     23/12/2020

**NDUNGURU, J.**

This application has been brought by one, Leonard Kawana, the applicant, who enjoys the services of Mr. Sambwee Mwalyego Shitambala, learned advocate. The applicant is seeking for extension of time in order to lodge an appeal out of time. It is based on the provision of Section 41 (2) of the Land Disputes Courts Act (Cap 216 R.E. 2002) as amended by the Written Law (Miscellaneous Amendments) Act No. 2 of 2016 and the same is supported by an affidavit sworn by Mr. Sambwee Mwalyego Shitambala, the counsel for the applicant. The first respondent challenged the applicant's application through counter

affidavit sworn by himself but the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent opted not to file the counter affidavit.

On the date of the hearing of the application, the applicant was represented by Mr. Sambwee Mwalyego Shitambala, learned advocate whereas Mr. Amani S. Mwakolo, learned advocate appeared for the first respondent and the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondent did not appear before the Court despite of the several efforts of the Court to summon them. Following the non-appearance of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> respondent, the Court proceeds to entertain this application ex-parte against them by way of written submission, where the counsel for the applicant and first respondent complied with scheduling order.

In his written submission in chief, Mr. Shitambala opted to adopt the contents of the affidavit which was supported the chamber application. In addition to that, the learned counsel for the applicant prayed for the Court that, this application be allowed so as the matter is conclusively heard on merit.

In rebuttal, Mr. Mwakolo stated that, the present application is brought to seek extension of time to file an appeal out of time to challenge the decision of the District Land and Housing Tribunal for Mbeya in Application No. 153 of 2010 which was delivered on 23<sup>rd</sup> day of September, 2015. He added that, the copies of the proceedings and

judgment were ready for collection on 06<sup>th</sup> day of May, 2016 being the lapse of 7 months and 14 days.

Again, the counsel for the first respondent argued that, on 10<sup>th</sup> day of June, 2016 the applicant filed an application No. 50 of 2016 for extension of time to file an appeal out of time through Mr. Mkumbe, learned advocate. He went on to submit that, the counsel for the first respondent did not object the said application and therefore, the applicant allowed to file his appeal out of time.

The learned counsel for the first respondent continued to submit that, on 9<sup>th</sup> day of March, 2017, the applicant filed Land Appeal No. 19 of 2017 through Mr. Magwayega, learned advocate which was struck out by this Court for being argumentative after the counsel for the first respondent raised the preliminary objection. He added that, on 6<sup>th</sup> day of July, 2018, the applicant filed the present application for extension of time after the lapse of two (2) years and ten (10) months from the date of the decision of the District Land and Housing Tribunal for Mbeya which was delivered on 23<sup>rd</sup> day of September, 2015.

Also, Mr. Mwakolo contended that, the present application lacks sufficient reasons for the delay. He cited the case of **FINCA (T) Ltd. & another vs. Boniface Mwalukisa**, Civil Application No. 589/12 of 2019, Court of Appeal of Tanzania (unreported) to support his position.

He added that, the Land Appeal No. 19 of 2017 was struck out by this Court due to the negligence of the applicant and his former advocate. He further submitted that, the present application intends to waste the precious time of this Court.

Lastly, the learned counsel for the first respondent demonstrated that, it is trite law that, the applicant in the application of this nature must account each and every day of the delay. In cementing his argument he cited the case of **FINCA (T) Ltd. & another vs. Boniface Mwalukisa (supra)**. In conclusion, the counsel for the first respondent submitted that, the applicant failed to account for the delay of two years and ten months up to the date of filing the present application.

Having carefully considered the opposite submissions filed by the learned counsel for the applicant and the counsel for the first respondent, the central issue for the determination is whether or not the applicant has shown good cause. In the first place, I wish to state that, the power of the Court to extend time is discretionary and that it can only be exercised where the applicant has shown good cause. This position was clearly elaborated in the case of **Kalunga Company Advocates Ltd. vs. National Bank of Commerce Ltd. (2006) T.L.R 235**, where the Court observed that:

*"The Court has discretion to extend time but such extension in the words of the Rule 8 only be done if "sufficient reason has been shown".*

Again, it is settled principle of the law that, sufficient is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion. Although sufficient cause is relative but there are some guiding factors for the Court to consider in exercising its discretionary power. See the case of **Attorney General vs. Mkongo Building and Civil Works Contractors Ltd. & another**, Civil Application No. 266/16 of 2019, Court of Appeal of Tanzania (unreported).

Furthermore, as we know it, the phrase *"sufficient cause or good cause"* have not been define anywhere in our laws. In essence, however, it means an applicant is duty bound to show adequate or substantial grounds sufficient to convince the Court to grant the order sought. See the case of **Samwel Munsiro vs. Chacha Mwikwabe**, Civil Application No. 539 of 2019, Court of Appeal of Tanzania (unreported).

In the case of **Selina Chibago vs. Finihas Chibago**, Civil Application No. 182 "A" of 2007 (unreported), the Court of Appeal of Tanzania inter alia elaborated that:

*"Admittedly, as this Court has consistently held in a number of cases, that "no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application". Each case, therefore, should be looked at in its own facts, merits and circumstances, by looking at all the circumstances of the case before arriving of the decision on whether or not sufficient reason has been shown for extension of time."*

After taking in consideration what has been stated in the affidavit which supported the present application and written submissions filed by the counsel for the parties. I would like to make the following observation.

First, the record shows that, the applicant made determined efforts to pursue the matter from the date obtained the copies of the judgment and decree of the District Land and Housing Tribunal on 06<sup>th</sup> day of May, 2016 where 7 months and 14 days was lapse. It was the old position of this Court that, when the Court delayed to avail the necessary documents to the aggrieved party on time, the said aggrieved party required to file an application for extension of time before filed his/her appeal before this Court as what he did by the applicant herein.

Therefore, the period thereafter to 9<sup>th</sup> day of March, 2017, when the Land Appeal No. 19 of 2017 was struck out for being incompetent, constitutes technical delay which should not be blamed on the applicant.

In other words, for the period starting from 9<sup>th</sup> day of March, the applicant has acted diligently to pursue his cause only that he was technically being knocked out as demonstrated above.

Moreover, I am mindful of the stance held by the Court of Appeal of Tanzania in the case of the **Bushiri Hussein vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, (unreported), that delay of even a single day, has to be accounted for. However, the circumstances of the present application are different as the applicant was not idle but all along has been in Court corridor tirelessly pursuing the intended appeal.

The same position is well emphasized by the Court of Appeal of Tanzania in the case of **Selina Chibago vs. Finihas Chibago**, Civil Application No. 182 "A" of 2007 (unreported), the Court of Appeal of Tanzania inter alia elaborated that:

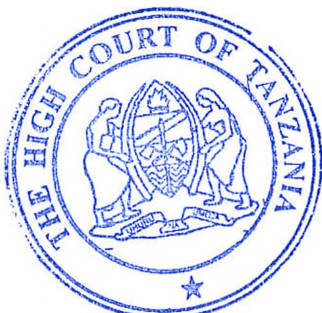
*"Admittedly, as this Court has consistently held in a number of cases, that "no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application". Each case, therefore, should be looked at in its own facts, merits and circumstances, by looking at all the circumstances of the case before arriving of the decision on whether or not sufficient reason has been shown for extension of time."*

Also, see the case of **Emmanuel R. Maira vs. The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010, Court of Appeal of Tanzania and **Victor Rweyemamu Binamungu vs. Geoffrey Kabaka & another**, Civil Application No. 602/08 of 2019, Court of Appeal of Tanzania (both unreported).

Having considered the authorities cited above and the reason for the delay advanced by the applicant, I am satisfied that the delay to lodge an appeal before this Court was not a result of applicant's negligence as alleged by the counsel for the first respondent. It means therefore, that the entire period of delay has been duly accounted for. In addition, I have taken into account that, it does not appear that the respondents are likely to suffer any prejudice if time is extended.

All said, I find merit in the present application for extension of time. The applicant is hereby granted 45 days extension of time to file his intended appeal. That 45 days period shall be reckoned from the date of the delivery of this ruling. No order as to costs.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
23/12/2020



**Date:** 23/12/2020

**Coram:** J. C. Msafiri - SRM, Ag. DR

**Applicant:** Absent

**For the Applicant:**

**1<sup>st</sup> Respondent:**  
**2<sup>nd</sup> Respondent:**  
**3<sup>rd</sup> Respondent:**  
**4<sup>th</sup> Respondent:** } Absent

**B/C:** Mwinjuma

**Court:** For Ruling. All parties are Absent.

**Order:** Ruling is entered in the Absence of all parties as typed.

  
**J. C. MSAFIRI - SRM**  
**Ag. DEPUTY REGISTRAR**  
23/12/2020

**DEPUTY REGISTRAR**  
**HIGH COURT OF TANZANIA**  
**MBEYA**