

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

MISC. LAND APPLICATION NO. 30 OF 2019

(C/F Land Application No. 181 of 2012 of the District Land & Housing
Tribunal for Moshi at Moshi)

MRS. PERSIS J. MUNUO.....APPLICANT

Versus

SHISAUYA MANG'ANDA SIAO.....1ST RESPONDENT

SAULI SIAO.....2ND RESPONDENT

RULING

Last Order: 19TH Aug, 2020

Date of Ruling: 24th November, 2020

MWENEMPAZI, J.

The applicant has brought an application under the provision of section 41(2) of the Land Disputes Courts Act [CAP 216 R.E. 2002] as amended by Act No. 4 of 2016 the Written Laws (Miscellaneous Amendments) (No.2) Act of 2016. She is applying for extension of time to file appeal against a decree extracted from the judgment in the District Land and Housing Tribunal for Moshi at

Moshi in Application No. 181 of 2012 delivered by Hon. Chairman M. Mhelele on 19th August, 2016. The application is supported by an affidavit sworn by the applicant herself.

The respondents on the other hand have filed a counter affidavit through Mr. Lengai Nelson Merinyo learned advocate in which they are disputing the application by averring that generally there are no sufficient grounds adduced to account for the delay since 31st March, 2017 to the time of filling the present application.

Parties were ordered to present their case by way of filling written submissions in a prescribed schedule. All parties dully complied with the filling schedule an effort which is very much appreciated. Applicant's submission was prepared and filed by Dr. Ronilick E. K. Mchami learned advocate while the respondent's submission was prepared and filed by Mr. Lengai Nelson Merinyo learned advocate for the respondents.

Submitting in support of the application Dr. Mchami, learned advocate, first prayed for the court to adopt the affidavit of the applicant and the contents therein be part of the submission in the application. I will not reproduce the submissions word for word however I will consider the same in the course of determining this application. The reasons for the delay in filling appeal in time was first of all occasioned by the delay by the District Land and Housing Tribunal for Moshi in supplying the certified copy of the proceedings which were required to accompany the memorandum of appeal. The learned advocate stated that according to the applicant's affidavit, the appeal was timely filed however the same was rejected by this court's

officers in the registry on the ground that it was not accompanied by the certified copy of the proceedings. Arguing further the learned advocate submitted that by the time the applicant was supplied with the required copy of the proceedings the time for filing her appeal had already expired. Having realized so the applicant through her former advocate filed in this court an application for extension of time to file her appeal. The application was withdrawn with leave to refile on 10th day of April, 2018. Thereafter the applicant filed an Application No.75 of 2018 which she was again obliged to withdraw on the 25th July 2019. The latter withdrawal was followed by the present application No. 30 of 2019 on 31st July 2019. The learned advocate explained further that ever since the applicant lost her land case in the District Land and Housing Tribunal, she has persistently been in the registry of this court pursuing her rights. The counsel for the applicant has cited the case of **Caritas Kigoma vs. KG Dewsi Ltd [2003] T.L.R 421** and argued that the applicant has stated reasons through her affidavit explaining the delay and that is what is required for this court to consider in determining this application. In the cited case it was held that:

"in an application for extension of time, the question to be considered is whether sufficient cause has been shown by the applicant for the delay in filing the appeal."

The second reason advanced by the applicant is that there are illegalities in the proceedings, judgment and decree subject of appeal. He submitted that the illegalities have been pointed out by the applicant in her intended memorandum of appeal accompanying the present application. He argued that the presence of illegalities in the judgment to be challenged has been

held by the Court of Appeal of Tanzania to be good reason for extending time. Supporting his argument the learned counsel referred to the case of **the Principle Secretary Ministry of Defence and National Service vs. Devram Valambia**[1992] T.L.R 189. For these reasons the learned advocate prayed for the application to be allowed.

Responding to the submission the learned Counsel for the respondents submitted that counting from the date when the decision which the applicant wishes to appeal against was delivered to the date when the present application was filed, more than two years have passed. It was his submission that the vital question to consider is whether the applicant has accounted for all the days of delay since pronouncement of judgment sought to be appealed against.

Specifically responding to the submission filed by the appellant, Mr. Merinyo submitted that there is no proof of what the applicant stated in paragraph 5 of her affidavit. He contended that proof was required to establish that indeed a memorandum of appeal was filed in this court and that the same was rejected at the registry. The learned advocate stated further that filing process is complete upon payment of requisite court fees; it was therefore his submission that there is no memorandum of appeal filed by the applicant's previous advocate as alleged in her affidavit. The learned counsel argued further that the applicant ought to have provided evidence of rejection of the said memorandum of appeal in terms of an order of this court which rejected the memorandum of appeal or an affidavit of the material person who rejected the Memorandum of Appeal or even the

affidavit of the applicant's previous advocate that the memorandum was filed within time but the same was rejected due to lack of proceedings.

Furthering his submission, the learned counsel for the respondent disputed the applicant's reasons for delay stated in paragraph 6 and 7 of her affidavit by stating that proceedings is not vital document when appealing to the High Court. The learned counsel argued that according to the provision of Order XXXIX Rule 1 of the Civil Procedure Code, Cap. 33 R. E. 2002 it only requires the Memorandum of Appeal to the High Court to be accompanied by the decree only.

Mr. Merinyo maintained that although extension of time is upon this court's discretion such discretion is judicial so it must be exercised according to rules of reason and justice as provided for in the famous case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010** (unreported). He concluded that all the grounds advanced by the applicant have not been proved by the contents of her affidavit.

Finally, with respect to the point of illegality of the decision, the learned counsel submitted that there are no illegalities in the proceedings, judgment and decree of the trial court. He insisted that illegalities which is required to form a reason for granting an extension of time to appeal is the one is obvious and capable of affecting interest of justice.

Rejoining the submission Dr. Mchami submitted that what the applicant stated in her affidavit is already under oath therefore requiring her to tender or produce a filed memorandum of appeal is unfair and beside the point.

Secondly the learned counsel submitted that litigants ought not to be punished when they act in compliance with the directives issued by courts. He maintained that the applicant was prevented from filing her competent appeal on time because of directives issued by the judge in charge of this court.

I have gone through the Chamber Summons, affidavit filed and the submission by the parties for and against the application. In determining this application, the issue is whether the applicant has advanced good cause to warrant grant of extension of time to appeal. The time to appeal is forty-five days as provided for under section 41(2) of the **Land Disputes Courts Act [CAP 216] RE 2019**. The same provision allows this court to extend such period provided that good cause is shown. Now what amounts to good cause depends on circumstances of each case as it was held by the court of appeal in the case of **Regional Manager, Tanroads Kagera Vs. Ruaha Concrete Company Limited**- Civil Application No. 96 of 2007- Court of Appeal of Tanzania At Dar Es Salaam, that,

"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules:"

Based on that, I will therefore examine the reasons for delay as advanced in the applicant's affidavit and submission. The applicant has given two reasons

for delay first being delayed to be supplied with a copy of proceedings from the trial tribunal and second one is illegality of decision sought to be challenged. In her affidavit the applicant vowed that she filed her memorandum of appeal in this court on 4th April 2017 which was within time but the same was rejected for not being accompanied with a copy of proceedings. As correctly argued by the counsel for the respondent there is no legal requirement that a memorandum of appeal must be accompanied with a copy of proceedings therefore it was upon the applicant to prove to this court that indeed her memorandum was duly filed within time but rejected as alleged. The general rule of evidence requires for the person who alleges to prove. The rule finds a backing from sections 110 and 111 of the **Law of Evidence Act, Cap 6 R.E. 2002** which state,

"Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist".

Section 111 provides to the effect that:-

"The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side".

Based on this laid down rules I agree with the respondent that the applicant has failed to prove her allegations and therefore this ground fails.

The second reason advanced by the applicant is illegality of the decision sought to be challenged. The law is very clear on the issue of illegality of decision that the alleged illegalities must be apparent on the face of record

which is not the case in the instant case. The applicant has not pointed out any illegality in the decision sought to be challenged instead she only stated that the illegalities are contained in the intended memorandum of appeal. The point of law intended to be raised must be of sufficient importance and apparent on the face of record such as the issue of jurisdiction and not the point which would entail a long-drawn argument or process. It is my considered observation that the applicant has failed to advance good cause for grant of extension of time.

This application is thus devoid of merits and consequently, I proceed to dismiss it with no order as to costs. It is so ordered.




T. MWENEMPAZI

JUDGE

24TH November, 2020

Ruling delivered in the absence of the applicant and presence of the 2nd Respondent.


T. MWENEMPAZI

JUDGE

24TH November, 2020