

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

AT MOSHI

MOSHI DISTRICT REGISTRY

LAND APPEAL NO. 19 OF 2020

(Originating from Land Application No. 135 of 2018 Moshi District Land and Housing Tribunal)

**THERESIA LEON URIO (SUING AS LEGAL ADMINISTRATIX OF
ESTATE OF LEONI JACOB URIO)..... APPELLANT**

VERSUS

CLOIDI URIO.....1ST RESPONDENT

JOHN BOSCO LEON.....2ND RESPONDENT

RAPHAELI LEONI.....3RD RESPONDENT

MARKO LEONI.....4TH RESPONDENT

24th November 2020 & 18th December, 2020.

RULING

MKAPA, J:

The Applicant, Theresia Leon Urio has lodged this application seeking for extension of time to file out of time an appeal against the decision of the District Land and Housing Tribunal for Moshi (the Tribunal) in **Misc. Land Application No. 135 of 2020** delivered on 16th December 2020. The application is brought under **section 14(1) of the Law of Limitation Cap 89 [R.E 2002]** and is supported by an affidavit sworn by the Applicant.



The brief facts leading up to this application is the fact that the Applicant sued the Respondents in the tribunal for trespassing into her land measuring half an acre (½) located at Mrao Sub-Division, Mengeni – Chini village within Rombo District in Kilimanjaro region. The tribunal decided in favour of the Respondents for the reason that the matter was *Res-Judicata*.

On 20th day of November 2020, when this application was scheduled for hearing, it was heard by way of filing written submissions. The applicant was represented by Mr. Ronald Rogatian Urassa learned advocate while the respondents appeared in person unrepresented.

Submitting in support of the application Mr. Urassa submitted the fact that an application for extension of time is entirely the **discretion** of the court and further that the court may exercise its discretion to grant extension of time only if there is sufficient cause. Supporting his argument he cited the decision in the case of **Yusufu Same and Hawa Dada V. Hadija Yusufu the Court of Appeal of Tanzania at Dar-es-salaam, Civil Appeal No. 1 of 2002** (Unreported) where the Court held that;

"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 judicially and

*the overriding consideration is that there must be "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 Ltd V. Jumanne D. Masangwa and Amosi A. Mwalandwa Civil Application No. 6 of 2001** (unreported))"*

Mr. Urasa went on explaining that the delay in filing this application was occasioned by the delay in obtaining tribunal's records named, Ruling and Proceedings respectively. Furthering his argument he submitted that the applicant's advocate requested to be supplied with copies of the same via letter dated 14/1/2020 and copies of Ruling, Proceedings and drawn order were supplied to the applicant on 28/02/2020 when time had already lapsed. Mr. Urasa went on explaining that another reason for the delay was due to financial constraints during the outbreak of Corona pandemic which had restricted movement. Finally, Mr Urasa prayed for this honourable court to invoke its discretionary powers in granting the extension of time sought.

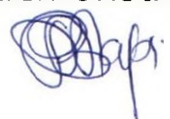


Responding against the application the respondents submitted that, as per records the tribunal's ruling was delivered on 16th December 2019 and the applicant was supplied with certified copies of the ruling and proceedings on 12th February 2020. However this application was filed on 20th March 2020 thus 37 days delayed. The respondents contended further that, in an application for extension of time the applicant is required to account for each day of delay of which the applicant had failed to account. The respondents cited the decision of the Court of Appeal of Tanzania in the case of **Dar-es-Salaam City Council V. Group Security Co. Ltd. Civil Appeal No. 234 of 2015 C.A** (Unreported) where the court had this to say;

"As a matter of general principle, it is always in the discretion of this court to grant extension of time.... but the stance which this court has consistently taken is that in an application for extension of time, the Applicant has to account for every day of delay"

As to the reason that the delay was due to financial constraints occasioned by corona pandemic, it was the respondents' view that this is just an afterthought.

Finally, the respondents prayed for the court to dismiss the application with costs for failure by the applicant to demonstrate reasonable cause for the delay.



In rejoining submission Mr. Urassa reiterated his submission in chief and further conceded the delay to the effect that, the applicant delayed for only 8 days as opposed to 37 days alleged by the respondents. He finally maintained his prayer that the application be granted as sought.

Having considered both parties argument for and against the application the question for consideration is whether the applicant has shown good and sufficient cause to warrant the extension of time.

Generally, it is settled law that application for extension of time is entirely in the discretion of the Court to grant or refuse. Such discretion is judicial and so it has to be exercised according to rules of reason and justice and not according to rules of reason and justice and according to private opinion or arbitrarily; See; **Eliakim Swai and Another V. Thobias Karawa Shoo. Civil Application No. 2 of 2016 (CAT)** at Arusha (Unreported) **Yusuph Same & Another V. Hadija Yusufu, Civil Appeal No. 1. of 2002.**

Admittedly, what amounts to sufficient cause has not been defined by our laws, this is because extension of time being a matter within a court's discretion cannot be laid down by hard and fast rules, but will be determined by reference to all the circumstances of each particular case. In Eliakim Shoo (*supra*)



the court set the following principles in an application of this nature;

- (a) The applicant must account for all the period of the delay;
- (b) The delay should not be inordinate.
- (c) The applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and;
- (d) If the court feels that there are other sufficient reasons, such as the existence of point of sufficient importance; such as the illegality of the decision sought to be challenged.

My perusal of the records has revealed the fact that the certified copies of the ruling and proceedings of the tribunal were delivered on 12/02/2020. However, the applicant filed the application on 20th March 2020 after 30 days had elapsed hence, 8 days of delayed and not 37 days as alleged by the respondents.

From the above finding in my view, the 8 days of delay is not inordinate. More so, given the nature of the dispute (land dispute) which involves family members justice demands the extension of time be granted so that the matter can proceed to be determined on merit in order to avoid family feud. Accordingly



the applicant is at liberty to file Appeal within 14 days with no order as to costs.

It is so ordered.

Dated and Delivered this 18th December, 2020.




S. B. MKAPA

JUDGE

18/12/2020