

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT TANGA

MISC. LAND APPLICATION. 49 OF 2019

(Arising from Land Appeal No. 18 of 2019 of
the High Court of Tanzania at Tanga)

FINIAZ EZRA APPLICANT

VERSUS

MHANDO OMARI..... RESPONDENT

RULING

MKASIMONGWA, J.

This is an application for extension of time in which to appeal against the decision of the District Land and Housing Tribunal for Tanga in Land Appeal No. 05 of 2018 dated 29th March, 2019. The Application is made by Chamber Summons filed under Section 38 (1) of the Land Disputes Courts Act 2002 and it is supported by the Affidavit sworn by Finiaz Ezra (Applicant).

The Application is contested by the Respondent one Mhando Omari and to that effect the later filed a Counter Affidavit. On the date the Application came for hearing Mr. Warehema Kibaha and Mr. Obediodom Chanjarika, learned advocates, appeared before the court, respectively, representing the Appellant and Respondent.

When he took the floor, in his submissions, Mr. Warehema adopted all the contents of the Affidavit filed in support of the Application. He emphasized that on being aggrieved by the decision

of Tanga District Land and Housing Tribunal in Land Appeal No. 05 of 2018 dated the 29th March, 2017 the Applicant did timely lodge an appeal to this Court challenging the same. The Appeal, that is Land Appeal No. 18 of 2019, was not successful for the same was later on 30/10/2019 struck out for being instituted by way a **"Memorandum of Appeal"** instead of **Petition of Appeal** as the law, that is Section 38 (2) of the Land Disputes Courts Act [Cap 216 R.E 2002] requires. As the matter was determined on merits the Applicant was not barred from re-filing it, and since, he is out of time prescribed for appeals, this Application was instituted. The same was promptly filed. Mr. Warehema submitted that since the Applicant was prompt in filing the Application and that he was diligent in pursuing the appeal previously lodged, that constitute a sufficient reason why the time should be extended as it is requested for.

As regards to the Counter Affidavit Mr. Warehema contended there is nothing shown therein as to how he Respondent shall be prejudiced if this Application is granted. Instead, the learned counsel stated that, there are overwhelming chances for the intended appeal to succeed. Based on the above submissions, Mr. Warehema prayed the court that it grants the Application. As to costs, that shall be considered in the intended appeal.

On the other hand, in his submission Mr. Chanjarika as it was for Mr. Warehema adopted all the contents of the Counter Affidavit sworn by the Respondent. He submitted further that the contested judgment was delivered on 29/03/2019. Section 38 (1) of the Land

Disputes Courts Act [Cap 216 R.E 2002] provides for sixty days for appeal against the decision or order of the District Land and Housing Tribunal for cases originating from a Ward Tribunal. Evidently, the Appeal period in regard to this matter ended on 19/05/2019. This Application was filed on 19/11/2019 that is 175 days of the contested decision. The days elapsed without a proper appeal before the High Court. This is because, the Applicant had sometime timely instituted a defective appeal and since the appeal was declared defective, then there was no appeal at all instituted in Court.

Mr. Chanjarika stated further that indeed the court has discretion to extend the time prescribed for appeal. The discretion however, can be exercised where the Applicant establishes a sufficient cause for delay. The Applicant has further to account for every single day of delay as it was held in the case of **Salum Suluhu Ramadhani v. Zahoro Abdallah Zahoro (1988) TLR**. Going by the submissions by the Applicant's counsel, Mr. Chanjarika stated that, it is not shown why the Applicant could not appeal in almost six months period before this Application was instituted.

As to the overwhelming chances for the intended appeal to succeed, Mr. Chanjarika submitted that the contested judgment well responds to all what the court ought to have considered in the matter before it. This court should therefore find no merit in this Application and the same should therefore be dismissed with costs.

In a short rejoinder Mr. Warehema, did first reiterate all what was stated in the submission in chief. As to the claim that there

was a delay of 175 days Mr. Warehema stated that the claim was not correctly put by his learned friend advocate for the Respondent. He added that it is not disputed that following the decision under dispute, the Applicant did timely lodge an appeal to this court challenging it which appeal was struck out for being defective. The fact that the appeal was struck out did not render it never existed as the learned counsel for the Respondent suggests to the court which suggestion, the counsel did not support with law be it a statute or case law. The Appeal was diligently pursued by the Applicant and that this matter was promptly filed after the Appeal had been struck out. Mr. Warehema insisted his prayer to have this application been granted by the court.

That is all what was submitted by the learned counsels for the parties. Going by the submissions, it is clear that the parties to this matter were again parties to a Land Appeal No. 05 of 2018 of Tanga District Land and Housing Tribunal. It is not disputed also that the Applicant lost the Appeal in the judgment delivered by the Tribunal on 29th March, 2019. There is ample proof and in fact it is not disputed that, on being aggrieved by the decision, the Applicant challenged it by appeal timely filed to this court. The Appeal that is Land Appeal No. 18 of 2019 was eventually struck out later on 30/10/2019 on legal technicalities. Desiring of appealing against the decision of the District Land and Housing Tribunal the Applicant came with this Application. The same was brought under the provision of Section 38 (1) of the Land Disputes Courts Act [Cap 216 R.E 2002]. The section reads as follows:

"38 (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division). Provided that the High Court (Land Division) may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."

It is clear from the above section of the law that the High Court (Land Division) has discretion to enlarge time limited by law for appeal against the decision or order of the District Land and Housing Tribunal for matters originating from the Ward Tribunal. The High Court may exercise such a discretion upon being satisfied that there is established a good and sufficient cause. What is a good and sufficient cause? In the case of **Selina Chibango vs. Finiaz Chibango**: Civil Application No. 182"A" of 2007, CAT – Dar es Salaam (unreported) the court stated as follows:

"No particular reason or reasons has been set out as standard sufficient reason. 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 circumstance of the case before arriving at the decision on whether or not sufficient reason has been shown for extension of time"

The same view had the court in the case of **Yusufu Same and Hawa Dada v. Hidayu Yusufu**; Civil Appeal No. 1 of 2002, CAT at Dar es Salaam (Unreported) where it is stated that:

"What amounts to "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 delay, lack of diligence on the part of the applicant"

In the case of **Transport Equipment Ltd v. D. P. Valambhia (1993) TLR. 91** the Court of Appeal of Tanzania took a view that an allegation that the decision which is intended to be challenged in appeal is illegal is a sufficient cause for extension of time. In the case the court stated as follow:

"When the point at issue is one alleging illegality of the decision being challenged, the court has a duty even if it means extending the time for the purpose to ascertain the point and, if the alleged illegality be established, to take appropriate measures to put the matter and the record right."

In the case at hand, the Applicant was delayed when he was pursuing the previously appeal he instituted against the contested judgment which appeal was however struck out from legal technicalities. This is challenged by the Respondent who sated that as the appeal was not competently in court suffices it to say that there was no appeal at all. As such, he counted the delay as being

for 175 days period. Indeed, as the appeal was incompetent, it existed not in the eyes of the law. This however does not make the fact that there was an appeal lodged and the time it took in court non-existent. Indeed the appeal as a matter of fact did exist. The law under which this application is brought does not provide to the effect that in computing the period of limitation, the time the matter has been incompetently in court shall be excluded. This is common under the Law of Limitation Act [Cap 89 R.E 2019] – See section 19 of the Act. Although the Land Disputes Court Act [Cap 216 R.E 2019] does not provide for exclusion of time as it is for Section 19 of the Law of Limitation Act, the time taken by one diligently prosecuting a matter in court shall be excluded when it comes to computation of time of limitation under the Land Disputes Court Act [Cap 216 R.E 2019]. As such the time of limitation in this matter started running against the Applicant on 29th March, 2019 when the contested decision was delivered and it stopped on 13th May, 2019 when the previous Appeal was instituted. The same resumed running against the Applicant on 30th October, 2019 when the Appeal was struck out. As from 29th March, 2019 to 13th May, 2019 it is about 45 days similarly from 30th, October, 2019 when the Appeal was struck to 19th November, 2019 when this Application was instituted in about 20 days. It can be safely stated here that, there was a delay of about five days which I am convinced to have been justified by the Applicant's diligence shown in the matter and it cannot be reasonably said that he was negligent or even in action.

In the event I will grant this Application and time in which to file the Appeal is extended for sixty days from today. As Mr. Warehema thought of costs to be considered in the Appeal if any is filed, no order as to costs is made in this matter.

Dated at Tanga this 15th of October, 2020.




E. J. Mkasimongwa

JUDGE

15/10/2020