

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO 7 OF 2020

**(C/F Application No 77 of 2017 District Land and Housing tribunal of
Karatu at Karatu)**

JOSEPH THOMAS TEMU 1ST APPLICANT

CONSTANCIA THOMAS TEMU2ND APPLICANT

WILBRUGA THOMAS TEMU 3RD APPLICATION

VERSUS

YOHANI THOMAS TEMU 1ST RESPONDENT

PIUS THOMAS TEMU 2ND RESPONDENT

RULING

ROBERT, J:-

The Applicants herein seek to be granted leave to file an appeal out of time against the decision of the District Land and Housing Tribunal of Karatu in Land Application No. 77 of 2017 delivered on 25th November, 2019. The application was filed on 3rd February, 2020 under Section 41 (2) of the Land

Disputes Courts Act, 2002 as amended by Section 41 (2) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016 and supported by an affidavit sworn by Mr. Joseph Thomas Temu, the first Applicant on behalf of the remaining Applicants.

Briefly, facts relevant to this application indicates that the Applicants herein filed Land Application No.77 of 2017 at the District Land and Housing Tribunal (DLHT) of Karatu against the Respondents claiming ownership of the suitland measuring about one and half acres located at Ayabale village, Karatu District. The DLHT delivered judgment in favour of the Respondents on 25/11/2019. Aggrieved, the Applicants intended to appeal against the decision of the trial Tribunal however, being out of the prescribed time for appeal, they preferred this application seeking leave to file their appeal out of time. The application is opposed by a joint counter affidavit sworn by the two Respondents and presented for filing on 1st April, 2020.

At the hearing of this application the Applicants were represented by Mr. Dismas Lume, learned Counsel for the Applicants whereas the Respondents appeared in person without representation. The court ordered the application to be argued by way of written submissions.

Submitting in support of the application, counsel for the Applicants stated that, this application is filed under section 41 (2) of the Land Disputes Courts Act, Cap. 216 as amended by Section 41 (2) of the Written Laws (Miscellaneous

Amendments) Act, No. 2 of 2016 which allows this Court to extend the time for filing an appeal after the expiry of forty five days prescribed for filing an appeal provided that the Applicant has good and sufficient cause.

He submitted that the reasons advanced by the Applicants for the delay are deposed under paragraph 6, 7 and 8 of the affidavit in support of the application. The first reason is late supply of the copy of judgment, decree and proceedings to enable the Applicants to prepare a sound petition of appeal. Secondly, the counsel who could have assisted the Applicants to prepare the grounds of appeal was on vacation from 1st December, 2019 to January 2020 hence, by the time he was available the forty five days allowed by the law to file an appeal had already lapsed. Thirdly, he submitted that the intended appeal has overwhelming chances of success and noted that a copy of the intended petition of appeal is attached to the application. He also pointed out that interests of justice require that the aggrieved party be given a chance to be heard.

He stated that the Court is vested with discretionary powers to grant extension of time which must be exercised judiciously based on fundamental principles of law which require the aggrieved party to be given the right to be heard as envisaged in Article 13 (6) of the **United Republic of Tanzania Constitution** as amended from time to time.

Based on the reasons stated, he prayed for this application to be granted.

In reply, Counsel for the Respondents submitted that, submissions filed by counsel for the Applicants raises three grounds in support of this application namely:-

- (a) That, the Applicants were served with the copies of the decree, judgment and proceedings late on 17/12/2019 from the date of decision on 25/11/2019. He referred the court to paragraph 6 of the Applicant's affidavit.
- (b) That the Applicants' advocate was on vacation between December, 2019 to January, 2020 and was therefore not in a position to prepare and file an appeal. He referred the court to paragraph 8 of the Applicants' affidavit.
- (c) That, the intended appeal has overwhelming chances of success. He referred the court to paragraph 9 of the Applicant's supporting affidavit.

He argued that, first, this application is incompetent before the court as it is not supported by the affidavit of the 2nd and 3rd Applicants. He maintained that the 1st Applicant is not a representative of the 2nd and 3rd Applicants and therefore since the 2nd and 3rd Applicants failed to file supporting affidavit this application must fail.

Submitting further he argued that, this application is not supported by sufficient reasons warranting this court to exercise its discretionary powers to extend time for the Applicants to file an appeal out of time.

He argued that the reasons for the delay stated under paragraph 6 of the Applicants' affidavit that they were served late with copies of the decree, judgment and proceedings on 17/12/2019 is highly misconceived, misleading and without any merits. He observed that, if the Applicants admit that they were served with copies of judgment, decree and proceedings on 17/12/2019 then by simple arithmetic, from that date to 3rd February, 2020 when this application was filed there was a lapse of 48 days which were not accounted for. He argued that, it is trite law that for the court of law to exercise its discretionary power of extending time to pursue a legal remedy, the Applicants have to account for each day of delay. To support his argument he referred this court to the case of **Sebastian Ndaula vs Grace Rwamafa, Civ Application No. 4 of 2014, CAT at Bukoba (unreported) at page 8.**

Coming to the reasons stated under paragraph 8 of the Applicants' affidavit that the counsel who was to help the first Applicant to draft legal documents was on court vacation, he argued that, this is a mere allegation as there is no any proof in terms of the details of who was the Applicant's Advocate or affidavit from the said undisclosed Advocate stating that he was on vacation at that time. He argued that, even if this is true, failure to obtain legal assistance is not accepted to be a valid reason for extension of time. He referred the Court to

the case of **Azizi Mohamed vs Republic, Criminal Application No. 84/07/2019 (unreported)** in support of his argument.

He submitted further that, even if failure to obtain legal assistance is a valid reason for extension of time, it cannot apply in the circumstances of this case because the Applicant has not provided any particulars of the person who assisted him in preparing his documents instead, the Applicants' documents shows that they were drawn and filed by Joseph Thomas Temu, C/o Ward Executive Officer, Ganako Ward, Karatu – Arusha who is the first Applicant.

On the arguments that the Applicants' intended appeal has overwhelming chances of success, he maintained that this is not a relevant factor in an application for extension of time, it is also not a position of the law. He referred the court to the case of **Azizi Mohamed vs. the Republic (Supra)** at page 9 in support of this argument.

In the light of the arguments made, he submitted that the Applicants have failed to establish sufficient reasons for this court to grant extension of time and urged this court to dismiss this application with costs.

Having heard the contending submissions by the parties in this application, the court is left with one major consideration, whether the Applicants adduced sufficient reasons to warrant an extension of time to file an appeal.

Starting with the point raised by the Respondents that, this application is incompetent because the 2nd and 3rd Applicants failed to file their supporting affidavit to the application. Having gone through the records of this application, I have observed that the affidavit filed in support of this application was sworn by the first Applicant who deposed on behalf of the second and third Applicants as indicated in paragraph 3 of the said affidavit. That said, the second and third Applicants were not required to file additional affidavits since the affidavit sworn by the first Applicant was sufficient for the purpose. This argument is therefore not sustained.

The affidavit in support of the application indicates that the Applicants were served with copies of judgment, decree and proceedings on 17/12/2019. Since the Applicants were required to file their appeal within 45 days from the date of judgment which was 25/11/2019, it is obvious that by the time of receiving the said copies the Applicants were still having 23 days to file their appeal on time. This court is aware that, in deciding the aspect of extension of time the Applicants are expected to account for each day of delay. In the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) cited in the case of **Reuben Juma vs The Republic**, Misc. Criminal Application No. 89 of 2019 (unreported), this Court (Ngeyekwa J) held that:-

"Dismissal of an application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay."

In the instant case, the Applicants had enough time to file their appeal timely, they failed to advance sufficient reasons on why they were late in filing their appeal. The statement in the Applicants' affidavit that, the advocate who is normally responsible for preparation of their court documents was on court vacation, as a reason for this delay cannot constitute sufficient cause on which this court can exercise its discretion in favour of the Applicants. Further to this, while the affidavit in support of this application indicates that the alleged Advocate for the Applicants had travelled until the end of December, 2019, the application filed after his arrival, does not indicate that the Applicants involved an advocate in the drawing of this application.

In **Ratman vs Cumarasamy** (1964) 3 ALL ER 933 the court held; -


"In order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the laws were otherwise, a party in breach would have unqualified right to an extension of time which would defeat the purpose the rules which is to provide for a timetable for the conduct of litigation."

Considering the reasons adduced by the Applicants in support of this application, this court finds and holds that the Applicants failed to advance

sufficient cause to move this court to exercise its discretion. Accordingly, this application is dismissed with costs.

It is so ordered.




K.N. ROBERT
JUDGE
10/12/2020

