

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

MISC. LAND APPLICATION NO. 47 OF 2018

*(C/F Karatu District Land and Housing Tribunal Application No. 43 of 2017, Original
Land Application No. 72 of 2009 Rhotia Ward Tribunal)*

AFAAYA SELLI APPLICANT

VERSUS

SERIKALI YA KIJIKI CHA CHEMCHAM RESPONDENT

RULING

01/06 & 17/07/2020

MZUNA, J.:

In this application, **Afaaya Selli**, the applicant herein, is seeking for extension of time within which to file an application for revision of the order of the District Land and Housing Tribunal of Karatu (District Tribunal) in the application for Execution No. 43 of 2017 wherein the applicant was not awarded with costs.

The application is brought under section 41 (2) of the Land Dispute Courts Act Cap 216 as amended by the written Laws Misc. Amendment Act No. 2 of 2016 (*hereafter Cap 216*) and supported by an affidavit of the applicant. By order of the court, the application was disposed of by way of written submissions.

The basis of his submission for revision is that the dismissal of the application for execution without an order for costs was wrongly made since he was disturbed for no reasons. Now on the advanced reasons for leave to file revision out of time. Basically the applicant who appeared in person and unrepresented, advanced one main reason, that the delay was caused by failure of the District Tribunal to supply him copies within time. He referred the case of **Akonaay Sidawe v. Lohay Baran**, Civil Application No. 25|02 of 2016 CAT at Arusha (unreported) to bolster his assertion.

In reply, the respondent's counsel, Mr. Severin John Lawena, submitted that the applicant did not disclose if he applied to be supplied with the copy of the order subject of revision. Further that the applicant has failed to account for the delay exhibited from 13Th March, 2018 when he received the copy of the order to 17Th April, 2018 the date he filed the instant application. The learned counsel referred the case of **M | S Tanzania Coffee Board v. M | S Rombo Millers Limited**, Civil Application No. 35 of 2015 CAT Arusha (unreported) to buttress his argument that the applicant ought to have accounted for each day of the delay. He therefore invited the court to dismiss this application with costs.

The main issue is whether there is sufficient cause shown for the court to enlarge the time within which to file revision.

Under section 41 (2) of Cap 216, the court is empowered with the discretion to extend time within which to file an application for revision. In this regard, the court has to determine whether the applicant has advanced sufficient reasons for the delay.

Reading the affidavit of the applicant, it is averred that the impugned order was delivered on 18Th August, 2017 whereas copies necessary to file application for revision were supplied on 13Th March, 2018. Reading from the affidavit, the applicant averred at paragraph 7 that the delay was not inordinate and that it was caused by the District Tribunal.

As for the mode of application of the copies of dismissal order and proceedings, that is reflected under paragraph 6 of the affidavit in support of the application where it is averred that he applied for copies orally.

Mr. Lawena, the learned counsel has strongly challenged for the blame to be shifted on the tribunal. He has also capitalized on the alleged oral application. That there is no proof that the applicant applied for copies.

The law is now settled in view of what was held in the case of **Mrs. Kamiz Abdullah M.D. Kermal vs. The Registrar of Buildings and Miss Hawa Bayona** (1988) TLR 199 where it was held that:-

"...a copy of the proceedings is applied for in writing within 30 days of that judgment or order appealed against..."
(Emphasis mine).

The cited case of **Akonaay Sidawe vs. Lohay Baran** (supra) did not say the application was orally. It is therefore distinguishable. Such application ought to have been in writing and must be within 30 days. Nothing which suggest so in the present application. Court business is done on paper. All correspondences are done in writings. He cannot blame the Tribunal while he set on his rights.

Even if one can assume he was served late, the second point for consideration is whether he acted promptly? In this application, the order subject of revision was made on 18Th August, 2017. He says was served with relevant documents on 13th March, 2018. The present application was filed on 17Th April, 2018. There is a delay of 36 days which as well submitted by Mr. Lawena, the learned counsel has no explanation. He brought to the attention of this court the case of **M/s Tanzania Coffee Board vs. M/s Rombo Millers Limited**, Civil Application No. 35 of 2015, CAT at Arusha (unreported) where at page 10 the court cited with approval the decision in the case of **Bushiri Hassan vs. Latifa Mashayo**, Civil Application No. 3 of 2007, CAT (unreported) where it was held that:-

"Delay even of a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

The applicant has not accounted for the delay while aware as above shown that a delay of even a single day must be accounted for. It was further held in the case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No.116 of 2008, cited in the case of **Sebastian Ndaula v. Grace Rwamafa** (*Legal Representative of Joshwa Rwamafa*), Civil Application No. 4 of 2014 Court of Appeal of Tanzania (unreported) that:-

"It is trite law that an application before the Court must satisfy the Court that since becoming aware of the fact that he is out

of time, act very expeditiously and that the application had been brought in good faith."

The applicant did not act expeditiously. The application has not been brought in good faith. It was held in the case of **TanESCO vs. Mufungo Leonard Majura and 15 Others**, Civil Application No. 94 of 2016, CAT at DSM (unreported) at page 10 where the court cited with approval the case of **Lyamuya Construction Company Ltd vs. Board of Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 where it was stated that;

a) The applicant must account for the delay for the period of the delay.

b) The delay should not be inordinate.


c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,

d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

The above factors must also be read together with "a degree of prejudice" which the other party is likely to suffer. Reading from the applicant's affidavit, there is no evidence establishing that he acted diligently after becoming aware that he was out of time. A delay of about 8 months from the date of the decision and or 36 days from the date when he allegedly was supplied with copies points to that conclusion.

That said, exercising the discretion of this court judicially as the law requires me to do, I find that this application is intended to delay due process of the court. I proceed to dismiss it with no order for costs.




M. G. MZUNA,
JUDGE.
17. 07. 2020.