

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LAND APPLICATION NO. 18 OF 2018

(Arising from Land Application No.32 of 2013, Shinyanga District Land and Housing Tribunal)

MANYANDA MAIGE @ MANYAMBO MAIGE.....APPLICANT

VERSUS

PATRICK NALIM

***(Adminstrator of the estate of the late)*.....RESPONDENT**

NALIMI MAIGE MAGANGA

RULING

03/03 & 27/03/2020

G. J. Mdemu, J;

The Applicant moved this Court under the provisions of section 41(2) of the Land Disputes Courts Act, Cap. 216 as amended by the Written Laws (Miscellaneous Amendment) Act, No. 4 of 2016 so that he be granted extension of time to appeal to this Court. The appeal sought intends to challenge the decision of the District Land and Housing Tribunal of Shinyanga, in land application No. 18 of 2018. The application is supported by the affidavit of one Audax Theonest Costantine sworn on 26th of July, 2018.

The application came for hearing on 3rd of March, 2020 in which the Applicant was represented by Mr. Audax Costantine, learned Advocate whereas the Respondent appeared in person. Mr. Costantine in his submission prayed first his affidavit be adopted as part of his submission. He thus submitted that, grounds for extending time are technical one in that, appeal No. 103 of 2016 filed to challenge the impugned decision delivered on

24/1/2016 was struck out by this court (Makani, J) on 26/11/2017 for being incompetent. He added that, the Applicant filed another application which was again struck out on 24/7/2018 again for being incompetent. As the Applicant still interested to pursue his rights, this instant application got filed. Mr. Audax added.

He concluded by citing the case of **Bharya Engineering & Construction Co. Ltd vs Hamoud Ahmed Nassor, Civil Application No. 342/01 of 2017**(unreported) stating that, from 24/1/2016 to 24/7/2018 be regarded as a technical delay which is an acceptable ground to extend time. He therefore submitted to have accounted for each day of the delay including the two days, that is ,on 24/7/2018 to 26/7/2018 the date this application got lodged to have been used to process the instant application. He thought, under the premises, the application has merits and thus be granted.

The Respondent had nothing useful to reply save for banking on the ground as deposed in the counter affidavit filed on 22/8/2018. Having heard the parties and after considering the affidavit and counter affidavit, it be known that, the provisions of section 41(2) of the Land Disputes Courts Act, Cap. 216 as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016 empowers this Court to extend time of filing an appeal upon good or sufficient cause. The section reads:-

“41(2) An appeal under subsection (1) may be lodged within forty five (45) days after the date of the decision or order.

Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five (45) days."

In exercise of this discretion to extend time, this Court is guided by the principles that, the Applicant must show good or sufficient cause for the granting of application to extend time to appeal. Such sufficient and good cause must be pleaded in the affidavit. According to the affidavit, the Applicant delay was associated with the fact that, the delay got occasioned by the striking out of the appeal and later the application. This is what Mr. Audax termed as a technical delay, of which, I have no reason whatsoever to fault him. In the case of **Bharya Engineering & Contracting Co. Ltd**(supra) supplied to me by Mr. Audax, at page 11-12 quoted the case of **Fortunatus Masha v. William Shija and Another (1997) TRL 154** at page 155 as hereunder:

*"...a distinction should be made between cases involving real and actual delays and those like the present one which only involve what can be called technical delays in the sense that, the original appeal was lodged in time but the present situation arose because the original appeal for one reason or another has been found to be incompetent and fresh appeal has to be instituted. in the circumstances, the negligence if any really refers to the filing of an incompetent appeal, not the delay in filing it. **The filing of an incompetent***

appeal having been dully penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted immediately after the pronouncement of the ruling of this court striking out the first appeal."

With this legal position, in the instant application, the Applicant acted promptly to file an application for extension of time to appeal following the striking out of the appeal which was filed in time. Again, following the striking out of the application for extension of time for being incompetent, again it took the Applicant almost two days to file the instant application. I have no doubt therefore that, the Applicant has shown sufficient cause to allow this court to extend time within which an appeal can be filed.

In view thereof, this application is hereby granted. Time to appeal to this court is hereby extended for a period of forty five (45) days from the date of this ruling. Each party to bear own costs. I order accordingly.


~~Gerson J. Mdemu~~

JUDGE

27/03/2020

DATED at SHINYANGA this 27th day of March, 2020




~~Gerson J. Mdemu~~

JUDGE

27/03/2020