

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. APPLICATION NO 24 OF 2019

(Arising from Land Application No. 17 of 2014 District Land and Housing Tribunal for Maswa)

KIMALI OSHIMA(VILAGE CHAIRMAN

MWANKALI VILLAGE..... .1ST APPLICANT

FALE SHISHI.....2ND APPLICANT

VERSUS

MHELA SHISHI.....RESPONDENT

RULING

Date: - 10th March, 2020-28th April, 2020

MKWIZU, J:

This is an application for an extension of time to appeal to the High Court.

The application is made under the proviso to section 41 (2) of the Land

Disputes Court Act [Cap 216 R.E. 2002] as amended by Act No 4 of 2016,

section 14 (1) of the Law of limitation Act (Cap 89 R.E. 2002 and section

95 of the Civil Procedure Code,(Cap 33 R.E 2002). The application is made

by a chamber summons supported by two affidavits deposed by KIMALI

OSHIMA and SAID SELEMAN. The said applicants seek for extension of

time to appeal to the High Court against the decision of the District Land and Housing Tribunal for Maswa by Ho. E.F. Sululu, Charman dated 25/4/2015 in Land Application No. 17 of 2014. The respondent filed a counter affidavit sworn by JOHANNES MUTABINGWA MBATINA, counsel for the respondent.

The parties at the District Land and Housing Tribunal, are disputing over a vast grass land comprising of 200 acres in estimate situated at Usiulize/Mwankali village, Mwamalole Ward in Meatu District within Simiyu Region. Mhela Shishi who was the applicant at the tribunal claimed the suit land to belong to him and that Kimali Oshima who had leased part of the said land to Fale Shema is a trespasser while on the other hand, Kimali Oshima alleged that the suit land belongs to Usiulize Village and not Mhela Shishi. After a full hearing, the trial tribunal found in favor of Mhela Shishi. Kimali Oshema was declared a trespasser and therefore 1st and 2nd applicant herein were ordered to vacate and were permanently restrained from entering the suit land. Kimale Oshima and Fale shima were aggrieved with that decision. They however, delayed in appealing while on the process of obtaining copies of the judgment and decree as the tribunal could not avail the requested copies in time. To have their way open to the

High Court, applicants applied for extension of time to appeal out of time via Land Application No.33 of 2016. The application was struck out on 12/6/2019 for being incompetent. Tirelessly, they filed this application on 10 /7/2019, 28 days after the striking out of the first application for extension of time.

At the hearing, the applicants were represented by Mr. Kabisi Mahona, solicitor while the respondent was being assisted by Mr. Audax Constantine advocate.

In his oral submission in support of the application, Mr. Kabisi submitted that, the applicant's failure to file appeal within time was because of the delay by the District Land and Housing Tribunal to issue them with a properly certified judgment and decree. He clarified that, the judgment of the tribunal was delivered on 25/4/2016, first applicant wrote a letter requesting for the proceedings, judgment and decree on 6/5/2016 and it was served upon the applicants on 15/8/2016 when they were already time barred. For purposes of filling a proper appeal, they, on 7/9/2016 filed an application for extension of time which was struck out by Kibella J (as he then was) for incompetence. Still interested, they then filed the current application. He said, the delay was not caused by the applicants dilatory

actions but the Maswa DLHT who delayed in serving them with the necessary documents. This ground is also elaborated in paragraph ,2,3,4,5,6,7,8,9,10 , 11,12 and 13 of the applicants affidavits. He cited the case of **Tanzania Sewing Machine Tanzania Ltd V. Njeke Enterprises Ltd**, Civil Application No. 56 of 2007 stressing that a part should not be punished for actions done by the court.

Speaking on the time between 12/6/2019 when the first application for extension of time was struck out to 10th July, 2019 when they filed this application, Mr. Kabisi said, they were preparing documents for filling the application at hand. He prayed to have the application granted.

In responding to the application, Mr. Audax conceded to the fact that , there was an earlier filed application for extension of time which was struck out by the court. He therefore was not opposing to the explanation given by the applicant's solicitor with regards to the period of time from when the decision of the Tribunal was given to 12/6/2019 when Kibella J struck out the applicant's application for extension of time. He said, this was a technical delay which is accepted. Mr. Audax's query was on the time spent by the applicant from 12/6/2019 to 10/7/2019 when this application was filed. He said, the 28 days were not justified.

Demonstrating his dissatisfaction with the explanation given in respect with the 28 days, Mr. Audax, said, applicants have demonstrated inaction, lack of diligence in pursuing their appeal. He refereed the court to the case of **Dar es Salaam City Council V. S, Group Security Co. Ltd**, Civil application No.234 of 2015 CAT (Unreported) insisting that each day of the delay must be explained either in the affidavit or submission before the court .Finally, Mr. Audax prayed to have the application dismissed with costs.

Appeals from the District Land and Housing Tribunal to the High court when excising its original jurisdiction must be filed within 45 days. After expiry of such period leave has to be sought. In an application for extension of time, the applicant must establish that the delay was with sufficient cause to warrant the court to grant the prayers. In the case of **Yusuph Same & another V. Hadija Yusuf**, civil appeal No. 1 of 2002,(Unreported) the Court of appeal in interpreting the term sufficient cause said it should encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking necessary steps

The question that follows therefore is whether the applicants has adduced sufficient reasons. It is clear from the applicant's affidavit and the submission made before this court that after noticing the delay, applicants filed land application No 33 of 2016 which was struck out hence this application.



The respondent counsel is not happy with the justification given in accounting for the period between the time when the first application was struck out to when this application was filed. Respondents counsel is suggesting that, the applicants have failed to account for the delay. I have gone through the case of **Dar es Salaam City Council** (Supra) cited by the respondent's counsel. In that case, applicant filed an application for extension of time to lodge appeal out of time. The application was dismissed, applicant delay in filing a second bite application for 60 days from when it became aware of the dismissal order of the High court. The applicant in a second bite application at the Court of appeal conceded right away to have not accounted for the 60 days. The application was therefore dismissed for the applicant's failure to account for over sixty (60) days of the delay.

The facts of the case above is different from our case. In his submission, Mr. Kabisi said, between 12/6/2016 to 10/7/2016, 28 days, they were preparing the documents for the filing of this application. I have perused the records in Civil Application No. 33 of 2016 and the decision subject of the intended appeal, my analysis of facts from the general nature of the dispute where respondent is claiming to be the owner of the 200 acre in estimate, of the bush land while the Chairman of the said village alleges that the suit land belongs to the Village authority, I think, there is a need of allowing the application to let the High court re-consider the said dispute between the parties. I am guided, by the decision of **Mabroma Gold V. Ministry of Energy**, (19980 TLR 425 where the court held that where the application does not constitute a procedural abuse, then, extension of time should be granted.

This application is therefore granted. The applicants are given thirty (30) days from the date of this ruling to file the intended appeal.

Order accordingly.

DATED at Shinyanga this 28th day of April, 2020.



E.Y. MKWIZU
JUDGE
28/4/2020