

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
AT MBEYA
MISC. LAND APPLICATION NO. 65 OF 2019**

(From DHLT No. 63/2017 for Mbeya)

1. JUMA MWAMUDU

2. MWALYOYO MASODAS MWANANDE

3. OMARY MARIAM NYANJE

..... APPLICANTS

VERSUS

1. IJHUMILAGA ASSOCIATES CO. LTD

2. GODFREY MWAMLIMA

3. J. SIMKONDA

4. MFAUME CHARLES KYUMANA

5. MFAUME CHARLES KYALAWA

6. JUMA KANYERERE SIMKONDA

..... RESPONDENTS

RULING

Date of last order: 30/11/2020

Date of Ruling: 10/02/2021

NDUNGURU, J

In this application, the applicants are praying for the following orders.

- i. That this honourable court be pleased to extend time for the applicants to file an appeal out of time against the decision of the

District Land and Housing Tribunal in Land Application No. 63 of 2017 delivered on 04/06/2018.

- ii. Costs of the application
- iii. Any other relief(s) this court may deem fit and just to grant.

This court is moved under the provisions of section 41(2) of the Land Disputes Courts Act Cap 216 R.E. 2002 now 2019. The application is supported by affidavit sworn by the applicants, Juma Mwamudu, Mwalyolyo Masodas Mwanande and Omary Mariam Nyanje. The 1st, 3rd and 6th respondents opposed the application by filling counter affidavit.

When the application was due for hearing before me, the applicants appeared in person while the 1st respondent was represented by Mr. Simon Mwakolo advocate, and the third (3rd) and 6th appeared in person at the sometime the 4th was reported to have passed away and no administrator was found after a long time the case was adjourned waiting for the appointment of the administrator.

By consensus of the parties the application was way by heard of written submissions.

The main ground for this application is stated at para 5,6 and 7 of the applicants affidavit. That is, the applicants being layperson were mis directed by their learned counsel one Bitrice Mwahandi. It is the applicants argument that being laymen they engaged the advocate who wrongly interpreted the law of limitation and wrongly advised the applicants to file the appeal within 60 days instead of 45 days. It is the applicants' further submission that they should not be punished for the wrong which was committed by their advocate.

The counsel for the 1st respondent strongly resisted the above stated ground raised by the applicants. The counsel for the respondent submitted that the law is clear that ignorance of law is not an excuse and it is trite that ignorance of law has never been a sufficient and good cause for grant of extension of time.

The parties rival arguments were presented by way of written submissions pursuant to court order. While the applicants appeared unrepresented, Mr. Simon Mwakolo learned counsel represented the first respondent and the rest of the respondents appeared unrepresented.

The applicants in their submission, reiterate what was deposed in their affidavit, saying they are laymen and that they enjoyed legal service of one Bitrice Mwahandi learned advocate who unfortunately wrongly interpreted the law of limitation when advised them that they were within time while not and later she filed appeal without extension of time.

On the other limb, the applicants have submitted that the delay to file an appeal on time was due to late supply of certified copies of judgement and proceedings from the District Land and Housing Tribunal.

Lastly the applicant argued the court to grant extension of time because the delay partly was contributed by the time spent when the applicants were prosecuting the appeal which was struck out on 22/08/2019.

Submitting against application, Mr. Mwakolo was of the argument that ignorance of law has never been a good cause for extension of time, that the applicants are trying to seek sympathy of the court while they had hired an advocate. The counsel referred to this court the case of **Hamimu Hamis Totoro @ Zungu Poblo and 2 others v. The Republic**, Crim Application No. 121/07 of 2018 (CAT) unreported.

The counsel further said, the position of law is clear that negligence of the advocate does not constitute a sufficient ground for extension of time. He buttressed his argument by referring the case of Martha Khotwe v. Minston Mwanjamila, Civil Application No. 5 of 2014 (CAT) Unreported.

Regarding the delay to be supplied with the certified copies of judgement and proceedings by the District Land and Housing Tribunal the counsel for the 1st respondent was of the submission that, such was a strange reason, the same was not deponed by the applicants in the affidavit, it be ignored. He referred the case of **Registered Trustees of the Archdiocese of Dar es salaam v. The Chairman Bunju Village Government & 4 others, Civil Appeal No. 147 of 2006 (CAT)** unreported.

The counsel further submitted that on the application for extension of time, the law is settled that the applicant must account for each and every day of delay. He referred the case of **Finca (T) Ltd and another V. Boniface Mwalukisa, Civil Application No. 589/12 of 2018 (CAT)** Unreported. He thus said the applicants have failed to account for delay of one year and three months thus prayed the application be dismissed with

costs for want of merit. In their rejoinder the applicants reiterated what was addressed in their submission in chief.

From the rival submission of the parties, the court is called upon to determine on whether the applicants have shown sufficient reasons to warrant exercise of its discretion and grant on extension of time.

It be noted that, the grant of an application for extension of time is a discretion of court. Such discretion is exercised upon the applicant satisfying the court that he was impeded by reasons sufficient for the court to grant the extension. See **Yusuph Sime & another V. Hadija Yusufu, Civil Appeal No. 1 of 2002 (CAT)** unreported, Dar es salaam City Civil Application No. 27 of 1987 and **Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2011** (all unreported).

Having shown the above proposition of law, the supreme court of the land came out with key conditions that should guide the court when considering to grant or not to grant an application for extension of time. This was illucidated in the landmark case of **Lyamuya Construction**

Company Limited v. Board of Trustees of YWCA CAT – Civil Application No. 2 of 2010, and many other cases.

Having so pointed, I now revert to crucial substance of the parties contention. This is whether the applicants have shown sufficient cause for the court to invoke its discretion to grant the application.

Deducing from the applicants deposition deposed in their affidavit the reason for delay stated therein is the applicants ignorance of law this is on their part and on the part of their advocate for her failure to interpret the law of limitation. The question is whether ignorance of law amounts to sufficient cause for the court to grant the application for extension of time. It is a settled law that, ignorance of law has never been a good cause for extension of time. In the case of **Hamimu Hamis Totoro @ Zungu Pablo and 2 others v. the Republic, Criminal Application No. 121/07/2018** the CAT ruled:-

"....the issue is whether ignorance of law constitutes a good cause for extension of time. There is a plathora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time"

Going through the applicants submission, the applicants have raised the ground that they delayed to appeal due to the delayment to be supplied with the copies of certified judgement and proceeding by the District Land and Housing Tribunal. As submitted by the learned counsel for the 1st respondent, this is a new ground which was not deponed in the affidavit, if that was the reason it was expected to be contained in the affidavit because affidavit is evidence. This was the position in **Registered Trustees of the Archdiocese of Dar es salaam v. The Chairman Bunju Village Government and 11 others**, Civil Application No. 147 of 2006 CAT unreported.

In the above cited case CAT had this to say,

*".....an affidavit is evidence we think that it was expected that the reasons for delay would be reflected in the affidavit in the absence of reasons it occurs to us that there was no material evidence upon which the judge could determine on merit the application before him
....."*

Based on the above principle I agree with Mr. Mwakolo advocate that this ground/reason must be ignored as it is an afterthought.

Date: 10/02/2021

Coram: D.B. Ndunguru, J

1st Applicant: Present

2nd Applicant: Present

3rd Applicant: Present

For the Respondent: Mr. Mwamakamba, Advocate

2nd, 3rd, 4th & 5th Respondent: Absent

B/c: Mwinjuma Athumani

Mr. Mwambakamba, Advocate : The matter if for ruling we are read.

1st Applicant: I am read for ruling.

2nd Applicant: I am read for ruling

3rd Applicant: I am read for ruling

Court: Ruling delivered in the presence of the applicants and Mr. Mwamakamba adv for the 1st respondent.




D.B. Ndunguru
JUDGE
10/02/2021