

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISC. LAND APPLICATION NO.26 OF 2020

(Arising from the District Land and Housing Tribunal for Mtwara in Land Case Appeal No. 2 of 2009)

MASOUD OMARY MASOUD.....APPLICANT

VERSUS

JAMAL ABDILLAH BAKARI (The administrator

of the late Abdillah B. Mohamed **RESPONDENT**

RULING

Final submission on: 25/2/2021

Ruling date on: 20/4/2021

NGWEMBE, J:

The applicant in his chamber summons is seeking substantially one order to wit; *the court be pleased to grant an order of extension of time to file an application for leave to appeal to the court of Appeal of Tanzania against the judgement and decree of Hon. Mipawa J; in Land Case Appeal No. 2 of 2009 dated 5th may, 2011"*



In moving this court; he cited section 5 (1)(c) and section 11 (1) of the Appellate Jurisdiction Act Cap 141 R.E 2002 and section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2002. He supported the application with an affidavit sworn by himself.

On the hearing of this application, both parties asked this court to order the matter to proceed by way of written submission. Their prayer was granted and both complied with the scheduling order of filing their written arguments. In his written submission, the applicant argued that, he intends to appeal to the Court of Appeal of Tanzania against the decision of this court in Land Case No. 2 of 2009 delivered on 5th may, 2011. He narrated on what happened until filed this application for extension of time. He added that, this court has unlimited powers to extend time. To support his argument, he referred this court in the case of **Mbogo Vs. Shah [1968] EA 93**, that the defect was not caused by negligence of the applicant. He cited also the case of **Fortunatus Masha Vs. William Shija and Another, (1997) TLR 154**.

In turn, the respondent submitted on the principles of law that this court is vested with power to grant extension of time to file notice of intention to appeal upon giving good reasons for delay. The discretion to grant extension of time must be exercised judiciously as opposed to personal whims, sympathy or sentiments. To support his point, he cited the case of **Daud s/o Haga Vs. Jenitha Abdon Mchafu, Civil Application No. 19 of 2006** (unreported) referring the case of **Parry Vs. Carson [1963] E.A 546**.



Added that, the applicant ought to advance grounds as to why the delay and account for each day of delay. However, in his affidavit, in all paragraph no any paragraphs explained the reason for delay, rather mere history and why he thinks he should be granted extension of time. To bolster his point, he cited the case of **Bakari Abdallah Masoud Vs. R** and the case of **Kalunga & Company Advocates Vs. National Bank of Commerce Limited [2006] TLR 235.**

According to paragraph 7 of his affidavit, the applicant alleged to withdraw his appeal on 26th February 2020 after discovering legal defect in his appeal, however he filed this application on 10th August 2020 which is 5 months and 13 days after withdrawal of his appeal. It was his view that no single reason was advanced as to why such long delay.

In rejoinder, the applicant submitted that, immediately after the court of Appeal gave its order on the 26th day of February 2020, the whole exercise of appeal was required to start afresh.

I have dispassionately considered and weighed the submissions from both parties. To begin with, I wish to reiterate on a general principle that whether to grant or refuse an extension of time usually court's is discretion. But, that discretion is judicial and so it must be exercised judiciously. In the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**(unreported) at Arusha it was stated that:-



"As a matter of general principle, it is the discretion of the court to grant extension of time. But that, discretion is judicial and so it must be exercised according to rules of reason and justice and not according to the private opinion or arbitrarily".

So, in order for the court to exercise its discretionary powers, the applicant has uncompromised duty to advance sufficient reasons to satisfy the court to grant extension of time. This principle was stated in the case of **Kundani Singh Construction Co Ltd Vs. Peter Ngigi Kamali, Misc. Labour Application No. 11 of 2013** (unreported) which quoted the principle developed in the case of **John Mosses and 3 Others Vs. R, Criminal Appeal No. 145 of 2006** where the court held:-

"In application of extension of time, the applicant is expected to show that he was presented sufficient or reasonable or good cause and the delay was not caused or contributed by dilatory conduct or lack of diligence on his part"

One of the main reason advanced by the applicant in his affidavit is the defect discovered as per paragraph 6 of his affidavit. However the available records, indicates that the applicant for the first time was granted extension of time of 14 days in Misc. Land Application No. 7 of 2020.

Now if you computed from 26th February 2020 when he was granted extension of time to 2nd October 2020 is equal to sixth (6) months. The question is why all that delay? In the case of **Mbogo Vs. Shah [1968] E.A the Court of Appeal for Eastern Africa** held:-

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors including the length of the delay, the reason for the delay,



whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended?

I have painfully visited the record of the trial court, the record of the first appellate court (this court) and all applications filed by the applicant with a view to underscore as to what transpired from 2008 when the application was filed for the first time in the District Land and Housing Tribunal for Lindi in Land Application No.18 of 2008 to date. It is clear from the record, that the applicant for the first time, knocked the doors of this court on 2009 upon being aggrieved by the decision of District Land and Housing Tribunal for Lindi.

Surprisingly, it is clear from the record that all the time when this court granted him an extension of time, the applicant failed to adhere to that court order. Such trend has only one answer that the applicant does not intend to appeal against this court's judgement, rather intends to abuse the court process by instituting numerous applications for extension of time. Parties must always be aware that, court orders are meant to be complied with timeously, failure of which, must be ready to face its consequences. One of the consequence is to refuse the application of similar nature. Even in the absence of previous extension of time, which was made by this court, yet the applicant has not disclosed any viable reason which this court may grant extension of time. I would therefore, agree with the respondent that this application lacks reasons for delay, same is dismissed with costs.



I accordingly order.

Dated at Mtwara in chambers this 20th day of April, 2021



A handwritten signature in blue ink, appearing to be "P.J. Ngwembe", written over a circular stamp.

P.J. NGWEMBE

JUDGE

20/4/2021

Court: Ruling delivered at Mtwara in chambers on this 20th day of April, 2021 in the presence of the applicant and Respondent.

Right to appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to be "P.J. Ngwembe", written over a circular stamp.

P.J. NGWEMBE

JUDGE

20/4/2021