

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MISC. LAND APPLICATION NO 55 OF 2020**

*(Arising from Land Application No. 153 of 2019 before Kahama District  
Land and Housing Tribunal)*

**JOHN SIMON MABALA.....APPLICANT**

**VERSUS**

**JOSEPH RAMDHAN MUYILA.....1<sup>ST</sup> RESPONDENT**

**LAMECK MALWALA.....2<sup>ND</sup> RESPONDENT**

**EXPARTE -RULING**

*24<sup>th</sup> March, & 16<sup>th</sup> April, 2021*

**MKWIZU, J.**

On 25<sup>th</sup> September, 2020, applicant **John Simon Mabala** filed his application for extension of time within which to file an appeal out of time against the decision of District Land and Housing Tribunal for Kahama in Land Application No. 153 of 2017 delivered on 10/01/2020. The application was made under section 41 of the Court (Disputes Settlements) Act, 2002 as amended by proviso 41 (2) of the Written Laws (Miscellaneous Amendment) Act, (No. 2) of 2016. The application is supported by an affidavit of the applicant sworn on 18<sup>th</sup> May, 2020.

On the hearing date, applicant appeared in person, unrepresented. The application was determined ex parte after respondent who were duly served failed to appear in court.

Arguing the application, applicant invited the court to take into consideration his affidavit in support of the application. Explaining the delay, applicant said, he delayed while attending his sick relative at Dodoma National Hospital and that he was not financially fit to hire a lawyer to prepare the necessary filing documents.

It should be noted from the outset that the principles of law governing extension of time is settled. For the Court to grant application for extension of time, the applicant must establish some material amounting to sufficient cause as to why he was unable to pursue his rights timely. See for instance **Regional Manager, Tanroads Kagera versus Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007, (unreported).

Section 41 (2) of the **of the Land Dispute Courts Act Cap 216 RE 2019** provided specifically that appeals from the DLHT are to be filed within 45 days from the date of the decision. However, the High court may , on good cause extended time for appealing. The section reads:

*"(2) -An appeal under subsection (1) may be lodged within fortyfive days after the date of the decision or order: Provided that, the High Court may, **for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days**" ( emphasis added)*

On the "**reasons**" for the delay, applicant deponed that:

4. **That**, due financial problems and other factors associated to it I wasted the time for filing an appeal in time, 'Hence this application.'
5. **That**, sometimes on 30<sup>th</sup> day of December, 2019 I took my sister in law by the name of REGINA SHIJA to attend medical checkup in Dodoma Regional Referral Hospital, she was admitted and I spent most of the time taking care of her to obtain best treatment at the hospital, she was again given an appointment to attend for further treatment.

***"A copy of the said Appointment Card is annexed hereto and marked as Exhibit 'JSM 1' of which the leave of this Court is craved for it to form part hereof"***

6. **That**, moreover my crops and my house washed out by due to heavy rainfall in our area which cause great loss to my family at large. I lost everything and my family depends everything from me. Therefore, I



failed to pay an advocate to prepare for me an appeal in this Honourable Court.

7. **That**, I live in the remote areas whereby means of transportation is not easy to board, roads which connects our villages with the Town centers were eroded out by seasonal river. Thus, there was no communication between our village and Town Centers.
8. **That**, due to wide spread of CORONA VIRUS DESEASE and school shut down I had to incur unexpected expenses for transportation to bring back my children from school who are ISAYA JOHN SIMON studies at S.t. Augustine University of Mwanza, REBECA JOHN SIMON at Mwamashimba Secondary School within Kwimba in Mwanza, and MATHEW JOHN SIMON at Kisuke Secondary at Ushetu-Kahama respectively of which I was not prepared with the situation, I was financially wound because I had to borrow money from different people so as to overcome the situation.

The above part of the affidavit discloses reasons for the delay. The first is reason is that applicant was attending his sick relative. Reading closely paragraph 5 of the affidavit, the attendance to Dodoma Hospital was done between 30<sup>th</sup> day of December, 2019 to 8<sup>th</sup> January 2020 . The averment is that he took his sister to the said hospital on 30/12/2019 and was required as per the appointment card attached to the affidavit to return to the same

hospital on 8/1/2020. The records of the application shows that the judgement of the tribunal was delivered on 10/1/2020, a date after the applicant's patient had attended the Dodoma Hospital as per her appointment. Now, how did this contributed to the delay in filing the appeal against the decision of the tribunal, neither the affidavit, nor the applicants submissions disclose.

Another reason given is a financial problem. On this applicant said, he was financially unable to hire a lawyer to prepare the appeal due to the fact he had to facilitate for the return of his children from the school after the lockdown caused by the corona pandemic and that he lost his properties due to flood which washed away his house and harvests . I have cautiously gone through paragraphs 6 and 8 of the affidavits. No timelines were given to indicate how the said events interfered with the filing of the appeal.

Another reason, applicant said, the roads connecting his village with the town centres were eroded by floods hence was unable to travel to Town center. Again this was just an averment in the affidavit without proof and

that no explanation was given on how the said disaster contributed to the delay in filling the appeal.

Applicant deposed that he was supplied with a copy of the decision on 13<sup>th</sup> February, 2020. The question to be asked is what hindered the applicant to file this application from February 2020 to 25<sup>th</sup> September, 2020 when he filed this application?

It is the position of the law that in an application for extension of time, each day of the delay must be explained. See for instance the case of **Lyamuya Construction Company Limited Vs. The Board of The Registered Trustees of Young Women's Christian Association**, Civil Application NO. 2 OF 2010, where the Court of Appeal enumerated factors to be considered while considering an application for extension of time namely, applicant must account for all the period of delay, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and if the court feels that there are other sufficient reasons, such as existence of a



point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Applicant in this application gave a mere narrative reason without proof. To allow shallow and unsubstantiated reasons, would be allowing parties to come to Court as and when they wish to do so . In **Tanzania Fish Processors Ltd v. Christopher Luhanga**, Civil Appeal No. 11 of 1994, it was observed that :

*"Limitation is material point in the speedy administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he wishes".*

In this application, the reasons given are not plausible. As stated herein above, no timelines were given for each of the stated hindrance expressed in the affidavit. In other words, the applicant failed to explain why he was not able to take necessary steps in pursuit of his rights from February 2020 when he received the copy of the decision to 25/9/2020 when he filed this application. I think, the 7-month unexplained delay is inordinate thus, indefensible.

That said, I find the application unmerited. Applicant failed to advance good cause sufficient for this court to grant enlargement of time for the applicant to file an appeal. The application is therefore dismissed with no order as to costs.

Order accordingly.

**DATED** at **Shinyanga** this 16 day of **April** 2021.

