

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DISTRICT REGISTRY)
AT ARUSHA**

MISC. LAND APPLICATION NO. 92 OF 2020.

(C/f the High Court of Tanzania in Misc. Land Application No. 95 of 2018, emanating from the decision of the District Land and Housing Tribunal for Manyara Region at Babati in Land Appeal No. 108 of 2016, Originating from Laghanga Ward Tribunal in Application No. 3 of 2015)

DARABU GICHENOG APPLICANT

Versus

AGUSTINO MAYUMBA RESPONDENT

RULING

24th February & 7th May, 2021

MZUNA, J.

Darabu Gichenog, the applicant herein, is seeking for extension of time to file appeal against the decision of the District Land and Housing Tribunal for Manyara, (the District Tribunal) in Land Appeal No. 108 of 2016, which was delivered on 27/3/2018. The application is supported by an affidavit sworn by Darabu Gichenog, the applicant. **Agustino Mayumba**, the respondent contested the application by filing counter affidavit sworn by himself.

At the hearing of this application, the applicant appeared in person and unrepresented, but his documents were drawn *gratis* by Mr. Richard E. Manyota, learned advocate from the Legal and Human Rights Centre while the Respondent was

represented by Mr. Ndibalema Johnson and Mr. Alpha Ng'ondya learned advocates. Hearing of this application proceeded by way of written submissions.

The present application takes its root from the applicant's claim for a piece of land measuring $7\frac{3}{4}$ acres (the suit land) against the respondent in Laghanga Ward Tribunal, (the trial Tribunal) vide Application No. 3 of 2015. Both the trial Tribunal as well as the District Tribunal declared the respondent the lawful owner of the suit land. The applicant wanted to appeal to this Court but was out of time as the copies of judgment and decree were not supplied to him in time. He filed Misc. Land Application No. 95 of 2018 in this Court seeking an extension of time to appeal against the decision of the District Tribunal. This court On 12/4/2019 (Mwenempazi, J.) granted the application, giving him 30 days within which to file same out of time. The applicant failed to file the appeal within the granted 30 days hence the present application.

The main issue is whether there is "good and sufficient cause" shown for the delay to file the appeal within the 30 days granted by this court?

The main reason for the applicant's delay to file the intended appeal is stated under paragraphs 5 to 19 of his affidavit in support of the application. He asserts that the drawn order and ruling in Misc. Land Application No. 95 of 2018 which was delivered on 12/4/2019 was not ready for collection. That he made several follow ups but he was told that the presiding Judge was absent until 30/5/2019 when he managed to secure the copy of the ruling. According to the affidavit, the applicant visited the High Court three separate dates.

Mr. Manyota fortified that it was beyond the applicant's control as he could not force the record of appeal to be forwarded to the High Court. He maintained that

extension of time can be granted where the delay was out of the Applicant's control and influence. To support his argument Mr. Manyota cited the case of **Yusufu Same and Hawa Dada vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported).

Another ground which has been advanced is the reason that after being supplied with the copy of the ruling, the applicant took it to the Legal and Human Rights Centre in order that his lawyer prepares the petition of appeal. The applicant also alleged illegality and irregularities in that the composition of the Ward Tribunal was not properly constituted as per the law and that there was no valuation report over the suit land so as to justify whether the trial Tribunal had jurisdiction to entertain the claim. He cited various case laws which insists that where there exists an illegality, extension of time has to be granted like **Fortunatus Masha vs. William Shija and**

Another [1997] TLR 154; **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia** [1992] TLR 182; **Amour Habib Salim Vs. Hussein Bafagi**, Civil Application No. 52 of 2009 and **Eliakim Swai and Another Vs. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 (both unreported). On account of the foregoing submission, he implored the court to grant the application with costs.

In response, Mr. Ng'ondya has submitted that the applicant was not serious in pursuing his appeal. He stated that the power to grant extension of time is solely in the discretion of the Court, however, such discretion has to be exercised judicially according to rules of reasoning and justice and not according to private opinion. The learned advocate also faulted the Applicant's affidavit stating that paragraphs 5, 6, 7 and 8 show that it was the information given to him by some other persons but the

source of information was not disclosed, therefore unreliable evidence. That the name of persons who told him that the presiding Judge was missing needed to appear at the verification clause in the affidavit. He referred this court to the case of **Lyamuya Construction Company Limited Vs. The Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

Mr. Ng'ondya submitted further that the ruling in respect of Misc. Land Application No. 95 of 2018 was not part of the record of appeal which means the petition of appeal could be filed in the absence of it. Moreover, there is no evidence that the applicant wrote a letter requesting for the said ruling which renders the dates mentioned in paragraphs 5, 6, 7 and 8 unsubstantiated. He cited the decision of this Court in

Andrea Ndewario and Another Vs. The Registered Trustees of the Apostles of Jesus, Misc. Civil Application No. 88 of 2018 (unreported) which insists on the need to establish that the applicant applied for the documents. On the same account, it was his submission that there is no proof that the applicant made follow ups in the District Tribunal.

On the alleged irregularities and illegality in the impugned decision, Mr. Ng'ondya stated that these are new facts which were never stated in the applicant's affidavit. Similarly, on the ground that there was no valuation of the suit land, the learned advocate stated that it was the Applicant who was the complainant in the trial Tribunal. According to Mr. Ng'ondya the applicant has failed to show good cause for the delay, he did not meet the threshold of the principles established in **Lyamuya Construction** (supra). The applicant has been negligent and the delay was inordinate. The learned

advocate implored the Court to dismiss the application with costs since the applicant failed to utilize the 30 days granted to him.

Rejoining to his submission in chief, Mr. Manyota advanced that he waited for the copy of the ruling so as to know exactly what this Court ordered. He reiterated that the Applicant was diligent in following up his case, he never slept over his right. The learned advocate reiterated his earlier prayers.

This application has been brought under section 38(1) of the Land Disputes Courts Act, Cap 216 [R.E 2002] which provides that:-

"38 (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court (Land Division):

*Provided that the **High Court may for good and sufficient cause extend the time for filing an appeal** either before or after such period of sixty days has expired."*

(underscoring mine).

According to the applicant, on 7/6/2019 he was supplied with the copy of the petition of appeal by his advocate. He filed the petition in the District Tribunal on 11/6/2019, but it was rejected because the certificate of legal aid was not signed by the Deputy Registrar. He took the documents to this Court on the next day, and after the certificate was signed by the Deputy Registrar, he filed the petition of appeal to the District Tribunal on 13/6/2019. Again, he made several follow ups to ensure that the appeal record is forwarded to this Court but ended in vain until 9/9/2019 when he decided to write a complaint letter to the Deputy Registrar. On 20/10/2019, he was informed that the record has reached the High Court. When he came back to the High

Court on 7/11/2019 he was informed that his appeal was rejected for being time barred.

Again, the Applicant was told that his appeal was out of time on 7/11/2019, but the instant application was filed on 18/11/2019.

The law is clear that where one intends to allege illegality as a ground for extending time, that illegality has to be apparent on face of record and it has to be that of sufficient importance. In **Samwel Munsiro Vs. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019 (unreported), it was held;

*"As often stressed by the Court, for this ground to stand, **the illegality of the decision subject of challenge must clearly be visible on the face of the record, and the illegality in focus must be that of sufficient importance.**" (Emphasis added).*

In the instant application, though the alleged illegalities and irregularities were not pleaded in the affidavit in support of the application, however, the respondent has not said how he will be prejudiced if this application is granted. It is true that the applicant failed to adhere to the Court order of filing his appeal within 30 days, all the same a delay of 10 days (8/11/2019 and 18/11/2019) is not an inordinate delay. Further the applicant has shown "diligence and not apathy or negligence" in view of the decision in the case of **Lyamuya Construction Company Ltd Versus Board of Trustees of Young Women's Christians Association of Tanzania**, (supra) that:-

- a) The applicant must account for the delay for the period of the delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,*

d) If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

This court had the occasion to say that a party should not be denied right of appeal if there is "no procedural abuse or contemptuous default" and the other party does not suffer any "prejudice"; See, the case of **Mobrama Gold vs. Minister for Energy** [1998] TLR 425. Having considered the nature of this case and mindful of the fact that extension of time to file appeal out of time is a matter of court's discretion which however must be exercised judicially. I find that this application has merit because the respondent will suffer no prejudice and the application has been made without undue delay and more so, in good faith.

I find that there is "good and sufficient cause" shown for the delay to file the appeal within the 30 days granted by this court. For the interest of justice, the applicant is given 21 days from the date of delivery of this ruling within which to file the intended appeal to this court.

This application is hereby granted with no order for costs.

Order accordingly.

