

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA**

MISC. LAND APPLICATION NO. 80 OF 2019

*(Arising from the decision of the District Land and Housing
Tribunal for Mbeya at Mbeya in Land Appeal No. 08 of 2019
and original Land Dispute No. 16 of 2018 Ifwekenya Ward Tribunal)*

**CHIPANTA DAUDI.....APPLICANT
VERSUS
CHRISPINI MWANDALO.....RESPONDENT**

R U L I N G

Date of last order: 11/03/2021

Date of Ruling: 23/06/2021

NDUNGURU, J.

The applicant in this application one Chipanta Daudi has brought this application seeking an extension of time to lodge an appeal out of time, the application has been brought by chamber summons made under Section 38 (1) of the Land Disputes Courts Act Cap 216 as Amended by the Written Laws (Miscellaneous Amendments) Act No. 02 of 2016. In his application the applicant pray for the following orders:

- (i) That this honourable court be pleased to grant an order for extension of time to the applicant to file appeal out of time.

(ii) Any other orders this honourable court may deem fit and just to grant.

The chamber application is duly supported by the affidavit duly sworn by the applicant. In return the application is resisted by the respondent.

The applicant's grounds for delay to file an appeal in time are contained in paragraph 4, 5, 6, 7, 8, 9, 10 and 11 of her affidavit where the applicant states that after the judgment he requested for certified copies of judgment and decree for intention to appeal and that back days before judgment on 8th April, 2019 the applicant was not feeling good hence attended at Ifwekenya Dispensary as he had already treated for the same problem of Ipigastria pain and been referred to Mwambani Hospital, and that due to financial crisis, the applicant decided to attend at traditional healer at Muheza – Manda at Songwe for more treatment, that on 5th June, 2019 the applicant returned back at Ifwekenya but the condition was still not good and his financial status was also not good hence fails to appeal in time, that on 17th July, 2019 the applicant condition became worse hence attended again to traditional healer and reside there for more than a month and when returned back the time

was already lapsed and that the applicant has been wrongly sued by the respondent at Ifwekenya Ward Tribunal on the Land which is not belongs to him and there is irregularities on the judgment of the trial Ifwekenya Ward tribunal which has been uphold by the District Land and Housing Tribunal for Mbeya. The rests paragraphs in applicant affidavit are just historical back ground of this application.

The back ground of this application traces back from the judgment of the Ifwekenya Ward Tribunal in which the respondent won the case, the applicant was not satisfied, he appealed to the District Land and Housing Tribunal for Mbeya at Mbeya where the tribunal also held in favour of the respondent hence this application for extension of time to file an appeal out of time which was filed on 10/10/2019.

By leave of the court the application was agreed to be disposed by way of written submission, both parties were represented by learned Advocates and they submitted their written submission as per scheduled order but the applicant did not file a rejoinder

In support of the application, the applicant`s learned Advocate Ms. Caroline Mseja submitted that the applicant failed to appeal on time because he requested the copies of the judgment and decree which he was supplied with after lapse of forty five days and still the applicant was sick as since 8th April, 2019 he attended at Ifwekenya Dispensary as

he had Epigastria pain and was referred to Mwambani Hospital, Songwe Region for more diaognosis.

She further submitted that due to financial situation, the applicant decided to attend at traditional healer at Muheza-Manda at Songwe Region for more treatment as his condition tends to change all the time hence fails to appeal on time.

Also in her written submission she submitted that the applicant has been wrongly sued at Ifwekenya Ward Tribunal as the disputed land in which the applicant had been sued by the respondent belongs to applicant`s mother who is still alive, She cited the cases of **Kalunga and company Advocates vs. National Bank of commerce**, Civil Appeal No. 124 of 2005 Court of Appeal of Tanzania at Dar es salaam and that of **Selina Chibago vs. Finihas Chibago**, Civil Appl. No. 182 of 2007, Court of Appeal of Tanzania at Dar as salaam. The applicant prays this court to allow his application for extension of time.

Opposing the application the respondent`s learned counsel Joyce Ms. Kasebwa submitted that the applicant filed his application supported by the affidavit which state that the judgment of the appellate tribunal was delivered on 14th April,2019 which is not proper but the proper date of judgment is 24th April,2019

It was the respondent's counsel further submission that the applicant's counsel is trying to mislead this honourable court by stating that he has been sued wrongly as he has no locus standi to be sued, she proceeded to submit that the applicant failed to raise the matter at earlier stage that he has no locus stand to be sued because the disputed land belongs to the applicant's mother, if he has no locus standi why is seeking an extension of time to file an appeal? raising this issue at this stage is an after thought

Also the respondent's counsel submitted that it is undisputed on point of law and fact that the applicant failed to file an appeal within time before this court and has no any reasonable cause as all matters arising and originating from primary court or ward tribunals has no need of attaching copies of proceedings, judgment and decrees, the applicants argument that he requested the certified copies of judgment and decrees are just stories as are not supported by any evidence

The respondent's counsel also submitted that applicant in his affidavit stated that back days before the judgment on 8th April, 2019 the applicant was not feeling good hence attended at Ifwekenya Dispensary for check up as he had already being treated for the same problem of Epigastria pain and being referred to mwambani hospital and due to financial crisis he decided to attend to traditional healer at Muheza,

again the applicant failed to attach any document to support his application as the document attached is not genuine

Furthermore the learned Advocate submitted that the applicant failed to demonstrate sufficient cause for delay and to account for each day of delay for him to file the appeal all days remain unshaken and the application ought to be struck out with cost for being meritless, she invited this court to the cases of **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007 (unreported) as stated and cited in the case of **Finca (T) Limited and Another vs. Boniphace Mwalukisa**, Civil Application No. 589 of 2018 Court of Appeal of Tanzania at Iringa and the case of **Godfrey Mbilinyi vs. Republic**, Misc. Criminal Application No. 145 of 2019 High Court of Tanzania at Mbeya.

Lastly the respondent's learned Advocate prayed the application be dismissed with cost.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the point for determination is whether the applicant has shown sufficient cause to move this court to grant the application.

It be clearly noted that in this kind of applications the grant or refusal of the extension of time is the discretion of the court. But such

discretion must be exercised judiciously. This position has been articulated in a number of cases decided by the supreme court of the land.

The duty of the applicant is to show sufficient cause which impeded him to appeal on time. See cases of **Symbion power Tanzania Limited vs. Oil com Tanzania Limited and another**, Civil Application No. 497 of 2017, **Moto Matiko Mabanga vs. Ophir Energy PLC and twenty others**, Civil Application No. 463 of 2017 Court of Appeal (un reported) and **Laurent Simon Assenga vs. Joseph Magogo and two others**, Civil Application No. 50 of 2016 Court of Appeal of Tanzania (unreported) where in the later the court stated:

*"in determining an application under Rule 10, the issue that has to be resolved is always whether the applicant has shown good cause for extension of time, what is good cause is a question of facts depending on the facts of each case, for that reason **may** and varied circumstances could constitute good cause in any particular case.*

In the current application, having gone through the records, applicant affidavit and the submissions by both parties I found that the judgment of the District Land and Housing Tribunal was delivered to the parties on 14/04/2019 that means the applicant was supposed to file an

appeal to the high court within forty five (45) days from the date of the judgment as per section 41(1) of the Land Disputes Courts Act Cap 216 Revised Edition 2019, unfortunately the applicant delayed to make the appeal until the time specified lapsed hence this application for extension of time to file an appeal out of time which was filed on 10/10/2019. The point for determination now is whether the applicant has shown good cause for the delay. The applicant in his affidavit advanced four main cause for the delay that, he requested for certified copies of judgment and decree for an intention to appeal but he has not indicated when did he made that request and the day those copies made available to him, that he was sick and attended at Ifwekenya Dispensary and later to traditional healer but the evidence to support that reason is insufficient, that he had financial crisis and had been wrongly sued, all these seems to be an afterthought, in short the account of days of delay from 14/04/2019 the date of judgment at the District Land and Housing Tribunal to the date of making this application 10/10/2019 has not been accounted sufficiently.

The counsel for the applicant had to account for each day of delay to file an appeal on time. In the case of **Bushfire Hassan vs. Latina Lucia Masanya**, Civil Appeal No. 03 of 2007 it was stated that "*Delay of even a single day has to be accounted for otherwise there would be*

no point of having rules prescribing periods within which certain stapes have to be taken" this stance has been restated in many authorities as Mustafa Mohamed **Raza versus Mehboob Hassanali**, Civil Application No. **168** of 2014, Court of Appeal of Tanzania, **Moto Matiko Mabanga vs. Ophir Energy PLC**, Civil Application No. 463 of 2017 Court of Appeal of Tanzania.

To my view the applicant was not prompt and diligent in pursuing his appeal, there was a due delay.

In the circumstances I am of the view that the applicant has not shown sufficient reasons for his delay to move this court to exercise its discretion.

I hold that the applicant has not shown sufficient cause which impeded him to file the appeal on time.

I hereby dismiss the application.

No orders as to costs.

It is so ordered.


B. D. NDUNGURU
JUDGE

23/06/2021

Date: 23/06/2021

Coram: D. B. Ndunguru, J

Applicant:

For the Applicant: Ms. Mseja – Advocate

Respondent:

For the Respondent: Ms. Kasebwa – Advocate

B/C: Akida Mzee

Ms. Kasebwa – Advocate:

We are ready for ruling.

Court: Ruling delivered in the presence of Ms. Kasebwa advocate for the respondent and Ms. Mseja advocate for the applicant:


D. B. NDUNGURU
JUDGE

23/06/2021