

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION No. 87 OF 2020

(Arising from the Land Application No. 06 of 2019 of Chato District Land and
Housing Tribunal)

TEGEMEO PAULOAPPLICANT

VERSUS

NYARUKONGORO VILLAGE COUNCILRESPONDENT

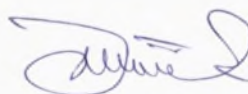
RULING

26th & 30th July, 2021

TIGANGA, J

This is an application filed by the applicant under section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and section 14(1) of the Law of Limitation Act, [Cap 89 R.E 2019] seeking for extension of time within which to file an appeal against the decision of the District Land and Housing Tribunal for Chato, in Land Application No. 06 of 2019.

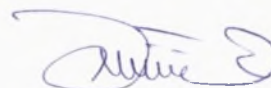
The application was made by chamber summons and supported by an affidavit and supplementary affidavits of the applicant in which, he



pointed out the background of the matter at hand and the reasons for his delay to file an appeal against the said decision consequence of which he seeks extension of time.

The brief background of this application is that before the District Land and Housing Tribunal for Chato, in Land Application No. 08 of 2019 the appellant sued the respondent for orders of declaration that the land in dispute was his. The suit was therefore decided in his disfavor, the decision which aggrieved him, consequence of which he decided to appeal before this court. However, he could not file the appeal on time due to the reasons to be pointed out in due course. Therefore it became necessary for the applicant to first apply for application for extension of time.

In the affidavit and supplementary affidavit filed in support of the application, the applicant deposed that he delayed to file an intended appeal because of two reasons which was beyond his control, **first**, that he was sick and was admitted to Chato District Hospital for about 14 days suffering from severe malaria and typhoid, to prove his sickness, he attached the discharge card, medical notification letter, and prescription form which he craved to form part of the affidavit. **Two**, that on 18th August, 2020 before completing filing the appeal, he



discovered that the judgment and decree which he was supplied by the District Land and Housing tribunal were defective in that the date of the judgment and that of the decree were at variant, therefore he on that date applied before the District Land and Housing Tribunal for rectification of the two documents. According to him, the rectification was not done immediately, they were completed and supplied in September, 2020 when it was already late that is why he filed the application for extension of time.

In countering the application the respondent through the counter affidavits taken by Donanti Bernado Rutahunila who introduced himself as the Village Chairperson of Nyarukongoro Village Council, countered all the facts deposed in the affidavit and the supplementary affidavit filed by the applicant and said the applicant is not entitled to any order he asks.

Hearing of the application was conducted orally, where the applicant was represented by Mr. Dutu Chebwa, learned Advocate, while the respondent was represented by Ms. Zainabu Alli, learned State Attorney. In the submission in chief made by Mr. Chebwa in support of the application, he to the large extent reiterated what the applicant deposed in the affidavit and supplementary affidavit. Therefore I will for purposes

of brevity, not reiterate what has already formed part of this ruling, rather I will point out few issues for clarification. He insisted that the applicant filed the appeal in time but while in the process on 18/08/2020, he discovered that the judgment and decree were at variance. While the judgment was dated on 03/07/2020, the decree, was dated on 06/07/2020 and the proceedings show that judgment was delivered on 06/07/2020.

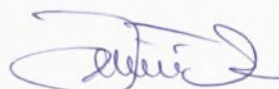
Following that state of affairs and due to the fact that, attaching the decree and judgment is necessary, in terms of Order XXXIX Rule 1 (1) of the Civil Procedure Code [Cap 33 RE 2019], the applicant could not appeal due to that variance. That is why the applicant has asked for extension of time which he prays to be granted so that he can appeal out of time. He prayed the application to be granted with costs.

In her reply submission, Ms. Zainabu Alli- State Attorney, submitted regarding the variance between the decree and judgment that the judgment should be appealed against within 45 days from the date of the judgment. According to her, the judgment was delivered on 06/07/2020 and the asked rectification was done 18/08/2020. They therefore had the ample time to file appeal on 21/08/2020 which they did not do.

She submitted further that, annexure BC - 1 shows that he was admitted on 16/07/2020, while the judgment was delivered on 06/07/2020, he had almost 10 days to file his appeal and further counting from when he was discharged, up to 21/08/2020 he had 21 days. According to her, even the medical notification letter, shows that from 12/08/2020, he was okay, and from that date, he had 9 days to file his appeal, but did not do so.

Responding to the third ground, regarding the failure of the system to receive their application. He submitted that the system could not have failed from that date up to when he filed the application at hand. She submitted that, the applicant was not diligent in taking action intending to appeal, as no evidence has been given that there was any physical follow up to ask for help. She said the applicant's failure to file the application within time was due to negligence. She prayed the applicant to be declared negligent and the application be dismissed with costs.

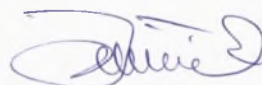
In his rejoinder, Mr. Chebwa, conceded the law that the applicant had 45 days within which to appeal, but failed to do so for the reasons he has already given. He prayed the application to be granted as prayed



That being a summary of the application and the submissions made by the parties in support and opposition of the application, what follows is the analysis of the material before me with the aim of deciding either to grant or refuse the application at hand. There is no dispute that under the provision upon which this application has been brought, this court has powers to grant extension of time upon good cause. It is common ground that, the decision of the court whether or not to grant extension of time is purely discretionary. However, there is always one main factor to be considered in deciding whether or not to exercise that discretion. This factor which is whether the applicant has given good cause or sufficient reasons for such delay which entitled him such extension. What amount to good cause has not been statutorily defined, the same has been defined by case laws as follows; for instance in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.02 of 2010 (unreported), CAT, the following guidelines were formulated in considering of what amounts to good cause:-

(a) The applicant must account for all days of the delay.

(b) The delay should not be inordinate.



(c) The applicant must show diligence, and not apathy, negligence or sloppiness in prosecuting 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."

In the authority cited above, the principle requires the applicant in application for extension of time, to account for every day of delay for him to be entitled to extension of time. That being the condition precedent, the issue which arises is, whether the applicant in this application has managed to account each days he delayed?

In the affidavit sworn and filed in support of the application and the submission made by the counsel for the applicant, I find only one main ground raised, that the documents which were mandatorily required to be attached with the petition of appeal, were defective the defect which was discovered on 18/08/2020 and immediately thereafter an application for rectification was made, but when the same were rectified the time within which to appeal had already lapsed. In as far as we agree that the documents were at variance on the date, we should also agree that the same were supposed to be rectified before filing an appeal. There is no dispute that under Order XXXIX Rule 1 (1) of the

Civil Procedure Code [Cap 33 RE 2019], it is mandatory that the appeal must be accompanied with the copy of decree and judgment. If that is the position there could be no way the applicant would have filed an appeal without valid decree and Judgment. That said, I find the applicant to have adduced good cause for delay which entitles him the order sought, the application is therefore granted as prayed whereby the applicant is given 14 days to file his appeal to this court out of time. No order as to costs is made.

It is accordingly ordered

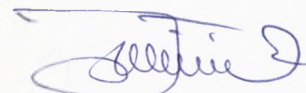
DATED at MWANZA this 30th day of July, 2021



J.C. Tiganga

Judge

Ruling delivered in open chambers in the presence of the parties on line through audio tele-conference



J.C. Tiganga

Judge

30/07/2021