

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA  
MISCELLANEOUS LAND APPLICATION NO.8 OF 2020**

**1. CHIMAGA MASAKA }  
2. MASELE MASAKA } ..... APPLICANTS**

**VERSUS**

**CHIMAGA MASAGA.....RESPONDENT**

**(Application from the judgement of the District Land and Housing Tribunal of  
Maswa)**

**(Ilanga M.T, Chairman)**

**Dated 21<sup>st</sup> day of October, 2016**

**In**

**Land Application No.15 of 2015**

.....

**RULING**

8<sup>th</sup> April & 18<sup>th</sup> June, 2021

**MDEMU, J.:**

The Applicants filed this application under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap.216 as amended by the Written Laws (Miscellaneous Amendment) Act, No.2 of 2016 praying for the following orders:

- 1. That, this Honourable Court be pleased to  
extend time for filling an appeal out of  
time.*
- 2. Costs of this application be provided for.*

*3. Any other order(s) that this Honourable Court may deem fit and appropriate to grant for the ends of justice.*

This application is supported by a joint affidavit sworn by the Applicants Chimaga Masaka and Masele Masaka on 4<sup>th</sup> of March, 2020. The application was heard on 8<sup>th</sup> April, 2021 whereby the two Applicants were represented by Mr. Mayenga, Learned Advocate and the Respondent was represented by Mr. Audax Costantine, Learned Advocate also.

Mr. Mayenga first prayed the Applicant's affidavit be adopted to form part of his submissions. He submitted then that, the Applicants were Respondents in Land Application No.15 of 2015 where the judgement was entered in favour of the Respondent herein on 21<sup>st</sup> day of October, 2016. Being aggrieved, the Applicants filed an appeal which was struck out on 22<sup>nd</sup> day of November, 2016 for want of the name of drawer of the said appeal. After that move, the Applicants filed Misc. Land Application No. 35 of 2017 to have time extended. The application was also struck out with leave to refile.

In essence, the Applicants delayed to appeal within time because they were looking for funds to finance their legal service. He cited the case of **Beatrice Mbilinyi v. Ahmed Mabkhat Shabiby Civil Appeal**

**No.475/2020** (unreported) at page 15 to support his point. He submitted further that, there was illegality and in this, he cited the case of **Mase Simon Rhobin v. Green Star English Medium School, Misc.Labour Application No. 9 /2019** (unreported) and **Yohana Nkwabi Ntaki v. Bhavesh J. Hindocha and 2 Others, Misc. Application No.8/2016** (unreported) to support his point on illegality to be a good ground for extension to appeal.

In reply, Mr. Audax Constantine opposed the application. He first prayed the counter affidavit of one Johannes Mutabingwa Mbatina be adopted to form part of his submissions. He then submitted that, in paragraph 7 of the Applicant's affidavit, financial constraints has never been a good ground to extend time. In this, he cited the case of **Yusufu Same and Hawa Dada v. Hadija Yusufu, Civil Appeal No.1 of 2002** (unreported) at page 10 to support his point. He also submitted that, in paragraph 10 of the Applicant's affidavit, the Applicants alleged to have received the ruling on 2<sup>nd</sup> October, 2019 and they filed this application No.8/2020 after almost 154 days. In his view, there is no explanation on what the Applicants were doing in all those days. He thought to be trite law that, every day of the delay must be accounted by the Applicants.



Regarding the issue of illegality, he submitted that, in the Applicant's affidavit, there is nowhere that illegality has been pleaded. He thus distinguished cases cited on illegality as an inapplicable. He concluded that, since the issue of having good cause is a mandatory requirement under section 41(2) of the Land Disputes Courts Act, then the court may not admit this application judiciously, unless such good cause has been shown.

In rejoinder, Mr. Mayenga insisted that, in paragraph 13 of the Applicant's affidavit to the District Land and Housing Tribunal, it appears the application was time barred, therefore, the tribunal was dealing with the matter which was a nullity. As to accounting days of the delay, he reiterated that, the same was caused by technical delay following the striking out of the appeal and an application for extending time and also due to financial constraints.

From the above respective submissions of both counsels, the affidavit and counter affidavit, the issue here for determination is whether the Applicants has demonstrated good and sufficient cause for delay to allow this court to extend time to appeal.

In limitation of time to file appeals, the provisions of section 41(2) of the Land Disputes Courts Act, provides that, an appeal must be filed within forty-five (45) days. The section reads as hereunder:-

*" An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order provided that, the High Court may, for the good cause, extend the time for filling an appeal either before or after the expiration of such period of forty-five days."*

In view of the stated position of the law above, the court may exercise its discretion to extend time to appeal where the Applicant have shown good and sufficient cause for delay. In the application at hand, Paragraph 2 ,7 and 9 of the Applicant's affidavit has deposed reasons for delay as follows:

*2.That the main application in Land Application No.15 of 2015 was decided in favour of the Respondent herein on the 21/10/2016 and we filed the appeal in time*

*on 22/11/2016 which was struck out on the basis that there was no name of the drawer.*

*7. That, from 19/10/2017 to 24/10/2017 we were finding money to pay advocate who could prepare the Application and on the 25/10/2017 we paid Rightmark Attorneys who prepared for us Misc.Land Application No.35 of 2017 for extension of time to file appeal out of time*

*9. That, we filed the Misc. Land Application No.35 of 2017 on 27/10/2017 and on 7/5/2019, the 1<sup>st</sup> Applicant Chimaga Masaka prayed to withdrawal the application with leave to refile it properly. However the application was struck out for been brought under wrong and inapplicable provision of the law.*

Regarding to the grounds for delay as quoted above, the records shows that, in Land Application No.15 of 2015 in the District Land and Housing tribunal, the decision was delivered on 21<sup>st</sup> October, 2016 and



by 22<sup>nd</sup> November, 2016 the Applicants filed an appeal intime which was struck out for the reason that there was no name of the drawer.

That means, any move to bring an appeal to court after being struck out, for sure it must be out of time, the reason why extension of time is going to question. This being the reason, I agree with Mr. Mayenga that, extending time can be granted on technical reasons as it was decided in the case of **Fortunatus Masha v. William Shija and Another, (1997) TLR 154** that:

*" A distinction has to be drawn between cases involving real or actual delays and those such as the present one which clearly involved technical delays in the sense that, the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out of first appeal. In these circumstances, extension of time ought to be granted.*

Regarding grounds on financial problem stated in the Applicant's affidavit at paragraph 7, the record shows that, the Applicants collected the ruling on 2<sup>nd</sup> October, 2019 and filed this application at hand on 3<sup>rd</sup> April, 2020, which was almost 4 months. I agree with Mr Audax that, financial

constraint is not a sufficient ground for extension of time as was decided in the case of **Yusuph Same and Hawa Dada v. Hadija Yusufu, Civil Appeal No.1 of 2002**(unreported).Notwithstanding, in the said case, the Court considered such financial constraint as a sufficient and good ground for extending time because of circumstances pecuriar to that case as, the Respondent was a widow. In the instant application, I am of the view that, such pecuriarity are wanting thus may not constitute sufficient cause to extend time.

In view of the reasons above, the Applicants has demonstrated good and sufficient cause to allow this court to extend time. I therefore allow this application and that, time to appeal to this court is extended for forty-five (45) days from the date of this ruling. Parties are ordered to bear their own costs.

It is so ordered.

  
**Gerson J. Mdemu**  
**JUDGE**  
**18/6/2021**

**DATED at SHINYANGA** this 18<sup>th</sup> day of June,2021.

  
**Gerson J. Mdemu**  
**JUDGE**  
**18/6/2021**

