

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

Misc. LAND APPLICATION No. 10 OF 2020

*(Arising from the District Land and Housing Tribunal for Korogwe at Korogwe in
Land Application No. 64 of 2015)*

AKWILINE FLAVIAN MARANDU APPLICANT

Versus

CRDB BANK PLS

KIMBEMBE AUCTION MART



..... RESPONDENTS

RULING

06.08.2021 & 13.08.2021

F.H. Mtulya, J.:

This is an application for extension of time within which Mr. Akwiline Flavian Marandu (the Applicant) can file an appeal in this court out of time to dispute the decision of the **District Land and Housing Tribunal for Korogwe at Korogwe** (the Tribunal) in **Land Application No. 64 of 2015** (the Application). In supporting the Application, the Applicant appeared himself without any legal representation whereas CRDB Bank PLS & Kimbembe Auction Mart (the Respondents) enjoyed legal representation of learned counsel, Mr. Gerald Mosha. In the course of proceedings, it appeared that the

parties agreed to dispose of the matter by way of written submissions.

The Applicant has invited this court to enlarge time to file an appeal out of time by use of section 41 (2) of the **Land Disputes Courts Act** [Cap 216 R.E. 2019] (the Act), which provides 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 supplied)

Concerning on what constitutes good cause in an application for enlargement of time, the law in section 41 (2) of the Act is silent. However, it is fortunate that there is a statement on the subject from our superior court in the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, in the following text:

*What constitutes **good cause cannot be laid down by any hard and fast rules**. The term good cause is a relative one and is dependent upon party seeking extension of time to provide the **relevant material** in order to move the court to exercise its discretion.*

(Emphasis supplied)

In the present Application, the Applicant registered two materials in the 4th to 8th paragraphs of his Affidavit in support of the Chamber summons and during submission of his arguments, namely: first, his learned counsel who represented him in the Application at the Tribunal abandoned him without any notice; and second, the intended appeal has high chances of success.

The materials registered by the Applicant were protested by learned counsel Mr. Mosha for the Respondents. In his opinion, Mr. Mosha thinks that the claim of abandonment of legal representation has no support of an affidavit emanating from the learned counsel mentioned by the Applicant. Regarding the second material on high chances of success in an appeal stage at this court, Mr. Mosha submitted that the material is registered prematurely in an application like the present one. In support of his argument, Mr. Mosha cited the authority in **The Regional Manager TanRoads Lindi v. DB Shapriya & Company Ltd**, Civil Application No. 29 of 2012.

In a nutshell, Mr. Mosha protested the Application and urged this court to refuse in granting the Application as the Applicant failed to account for every day of the delay as per decision in **Lyamuya Construction Company Limited v. Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010.

The issue in this court is therefore: *whether the Applicant has registered relevant materials to move this court to exercise its discretionary mandate in favour of the Application* as per law in section 41 (2) of the Act and precedent in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra). The practice of this court has been that the mandate of this court on the subject must be exercised judiciously and without any piece of evidence on arbitrariness.

In the present Application, the record shows that the decision of the Tribunal in the Application was rendered down on 12th November 2019 and certified for availability on 27th November 2019. The Applicant approached this court in filing the present application on 10th March 2020, which is almost one hundred and twenty (120) days delay, and Mr. Mosha for the Respondent asked accountability of each day of the delay as per directives of our superior court in judicial hierarchy, the Court of Appeal.

The quest was supported by the precedent in **Lyamuya Construction Company Limited v. Registered Trustees of Young Women Christian Association of Tanzania** (supra) and there is a bundle of the precedents on the subject (see: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 and **Elius Mwakalinga v. Domina Kagaruki & Five Others**, Civil Application

No. 120/17 of 2018. The rationale of the requirement is found in the precedent of the Court of Appeal in **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, that: *there would be no point of having rules prescribing periods within which certain steps have to be taken.*

I understand each case must be decided on its own peculiar circumstances (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009). However, in an application for enlargement of time, the practice in this court and court of Appeal has shown that: the court may consider the following factors: *length of delay, the reason for delay, the degree of prejudice and whether or not the applicant was diligent* (see: **Lyamuya Construction Company Limited v. Registered Trustees of Young Women Christian Association of Tanzania** (supra) and **NBC Limited & Another v. Bruno Vitus Swalo** (supra)).

It is unfortunate that in the present application, the Applicant has delayed for more than one hundred and twenty days (120). The way he conducted his business in prosecuting the appeal shows that he was negligent and never filed affidavit of his learned counsel who delayed him, and in any case the two materials registered in this application have no any merit whatsoever. I will explain:

The Court of Appeal has already settled that the claim of delay caused by reason of searching learned counsels is not a good cause

in an application for enlargement of time (see: **Ally Kinanda & 2 Others v. Republic**, Criminal Application No.1 of 2016 and **Ngao Godwin Losero v. Julius Mwarabu**, Civil application No. 10 of 2015). The reasoning in favour of the position is that: *a diligent and prudent party will always ask developments on the matter or otherwise he will have nothing to offer as an excuse for sloppiness* (see: **Ngao Godwin Losero v. Julius Mwarabu** (supra). This directive of the Court of Appeal binds lower courts, including this court. I think, in my opinion, I will follow the course in the instant application.

The second material registered by the Applicant will not detain this court as already there is a precedent in place which stated that an allegation of having high chances of success can not be discussed at the stage of seeking enlargement of time (see: **Zuberi Mussa v. Shinyanga Town Council**, Civil Application No. 3 of 2007 and **The Regional Manager TanRoads Lindi v. DB Shapriya & Company Ltd** (supra). The reason in favour of the position is straight forward: *the intended appeal itself has not been filed in court*. The express words from the precedent in **Zuberi Mussa v. Shinyanga Town Council** (supra) are to the effect that:

...it is not the domain of this Court to comment on whether there are chances of success in respect of the intended appeal. This position was underscored by the

*Court of Appeal of Tanzania in the case of **Kighoma A.***

***Malima v. Abbas Yusuf Mwingamno**, Civil Application*

No. 5 of 1997.

In the upshot, this application has no any merit whatsoever. It was intended to cause unnecessary delay for the Respondents to enjoy their rights and must fail. The practice of delaying enjoyment of rights on winning party, like present one, is prohibited by precedents of our courts (see: **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305 and **Zawadi Msemakweli v. NmB PLC**, Civil Application No. 221/18 of 2018).

Having said so, I reply the formulated issue above that: *the Applicant has failed to register relevant materials to persuade this court to exercise its discretionary mandate in his favour* as per requirement of the law in 41 (2) of the Act and precedent in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra). This Application fails and the Applicant must pay the Respondents costs of this application as he brought this application in bad faith (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008).

It is so ordered.






F.H. Mtulya

Judge

13.08.2021

This Ruling is delivered in Chambers under the seal of this court
in the presence of the Applicant Mr. Akwiline Flavian Marandu and in
the presence of Mr. Gerald Mosha for the Respondents.




F.H. Mtulya
Judge
13.08.2021