

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

Misc. LAND APPLICATION No. 2 OF 2020

*(Arising from the District Land and Housing Tribunal for Lushoto at Lushoto in
Land Appeal No. 3 of 2017)*

ATHUMANI HAMISI APPLICANT

Versus

AGNES STUATI RESPONDENT

RULING

12.08.2021 & 17.08.2021

F.H. Mtulya, J.:

This court was invited, under section 41 (2) of the **Land Disputes Courts Act** [Cap 216 R.E. 2019] (the Act), by Mr. Athumani Hamisi (the Applicant) to enlarge time period within which the Applicant can file an appeal in this court out of time to dispute the decision of the **District Land and Housing Tribunal for Lushoto at Lushoto** (the Tribunal) in **Land Appeal No. 3 of 2017** (the Application).

In order to abide with technicalities of this court, the Applicant decided to hire legal services of learned counsel Mr. Obediendom Chanjarika to draft and file Chamber Summons supported by an Affidavit. A brief statement displayed in the Affidavit shows the

following prayer: *That, this honorable court may be pleased to grant an extension of time.* The supporting Affidavit depicts a reason of delay at third and seventh paragraphs, which in brief shows: *That, the delay to appeal in proper way within time was caused by human rights office which misled the Applicant.* On 12th August 2021, when the Applicant was summoned to explain on the reason of delay, he invited Mr. Chanjarika to argue the reason for him. In his submission, Mr. Chanjarika briefly submitted that the Appellant had initially filed **Land Appeal Case No. 44 of 2018** (the Appeal) in this court within time limitation but acted under wrong advice from unqualified lawyer in the human right office who had informed him to appeal as an administrator of his deceased father's estates.

According to Mr. Chanjarika, the Appeal was struck out for want of proper parties hence the Applicant preferred the present application to abide with the requirement of the law in section 41 (2) of the Act, and if this court pleases, it may wish to grant enlargement of time. Finally, Mr. Chanjarika submitted that the Applicant is still vigilant in need of his appeal to be heard by this court and prayed for an enlargement of time within which the Applicant may file an appeal in this court.

This submission was not received well by Agness Stuati (the Respondent) who hired legal services of Mr. Ally Kimweri to protest the Application. In his brief submission, Mr. Kimweri stated that the

Applicant registered mere allegation of human rights officer without any support in affidavit or evidence hence it shows sloppiness and lack of diligence on part of the Applicant. According to Mr. Kimweri, applicants for enlargement of time must produce relevant materials for the court to exercise its discretionary powers to grant the application.

In substantiating the submission, Mr. Kimweri cited the authority in **Arunaben Chaggan Mistry v. Naushad Mohamedi Hussein & Three Others**, Civil Application No. 6 of 2016, arguing that the present Applicant took more than one hundred and forty five (145) days after the decision of this court in the Appeal to file the present application.

In the opinion of Mr. Kimweri, the Applicant has to account for every day of the delay from when the Appeal in this court was rendered down to the filing of the present application as per decision in **Ludger Bernard John v. National Housing Corporation**, Civil Application No. 372/01/2018. Finally, Mr. Kimweri conceded that the Applicant had showed vigilance in following up his appeal but had several defects such as absence of affidavit of the human right officer or the copy of the Appeal as per precedent in **Blue Star Service Station v. Jackson Mussetti [1997] TLR 310**.

In his final brief rejoinder, Mr. Chanjarika submitted that the Applicant is a layperson and was struggling in the Appeal all alone

without any legal assistance and therefore cannot be blamed for all the faults caused in following up his appeal and copies of the Application, decree and Appeal in this court.

I would like to appreciate the submissions and authorities registered by the learned counsels in this Application. However, the provision regulating enlargement of time to prefer appeal out of time is enacted in section 41 (2) of 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).

The cited law confers this court with a very wide discretionary powers to grant enlargement of time. However, it is upon a party to provide the relevant materials in order to move the court to exercise its discretionary mandate in his favour. On what constitutes good cause in an application for enlargement of time, the law in section 41 (2) of the Act is silent. 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 the material of lay person who was misled by the human rights officer when searching legal assistance. However, to show vigilance on his part, the Applicant had filed the Appeal within time, but the Appeal was struck out for want of *locus standi* on part of the Applicant. This material was protested on ground of the uncounted delay of one hundred and forty five days (145), as from when the Appeal was struck out to the filing of the present Application. Finally, Mr. Chanjarika prayed this court to consider a lay person from Usambara Ward of Lushoto District seeking an appeal in the High Court of Tanga at Tanga City.

The issue in this court is therefore: *whether the Applicant has established good cause 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).

In the present Application, the record shows that the Applicant had filed the Appeal within time to show that he was dissatisfied with the decision of the Tribunal in the Application. This shows that he was vigilant in following up his rights at appellate level. The

practice of this court and the Court of Appeal has shown that applicants who show vigilance in prosecuting their appeals may be positively considered in an application for enlargement of time to file appeals out of time (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017 and **NBC Limited and Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019).

I understand the Appeal in this court was delivered on 3rd September 2018 and the Applicant had preferred the present appeal on 15th January 2020, the delay of 145 days without plausible explanations on accountability of each day of the delay. This is not allowed by a package of precedents of this court and the Court of Appeal (see: **Lyamuya Construction Company Limited v. Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010, **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 reason in favour of the position originate in the precedent of the Court of Appeal in **Bashiri Hassan v. Latifa Lukio Mashayo**, (supra) No. 3 of 2007, where the Court stated that: *there would be*

no point of having rules prescribing periods within which certain steps have to be taken.

However, my understanding tells me that each case must be decided on its own peculiar facts (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009). The facts in the present Application show that a village man from Usambara Ward is asking the right to be heard in an appeal stage at this court based in Tanga City (see: article 13(6) (a) of the Constitution of the United Republic of Tanzania [Cap. 2 R.E 2002] and precedents in **Mbeya Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018 and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44).

The record shows further that the Applicant was busy prosecuting his appeal in good faith for want of merit of his dispute in this court. The practice in the Court of Appeal has shown that vigilant applicants who are bringing applications for enlargement of time may be considered for enlargement of time to file appeals out of time (see: **The Registered Trustee of the Evangelical Assemblies of God (T) (EAGT) v. Reverend Dr. John Mahene**, Civil Application No. 518/4 of 2017, **NBC Limited and Another v.**

Bruno Vitus Swalo (supra) and **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008

In conclusion, this application has merit and the Applicant has established good cause 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).

Having said so, I allow the Application and grant the Applicant fourteen (14) days leave from today, 17th August 2021, to file an appeal in this court without any further delay. I award no costs as the Application does not determine the rights of the parties to the

finality to identify the wrong party

It is so ordered.

F.H. Mtulya

Judge

17.08.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of Mr. Obediodom Chanjarika for the Applicant and in the absence of the parties.

F.H. Mtulya

Judge

17.08.2021