

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF TANGA**

**AT TANGA**

**LAND CASE APPLICATION No. 12 OF 2021**

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

**MODESTA LENZIAN ..... APPLICANT**

[As administrator of the estates  
of the late Paulinus Thobias]

**Versus**

**AMOS SEMKONDA ..... RESPONDENTS**

**RULING**

**12.08.2021 & 19.08.2021**

**F.H. Mtulya, J.:**

This is an application for enlargement of time within which Modesta Lenzian (the Applicant) can file an appeal in this court out of time to dispute the judgment of the **District Land and Housing Tribunal for Tanga at Tanga** (the Tribunal) in **Land Application No. 92 of 2017** (the Application) delivered on 30<sup>th</sup> November 2020. The reason of delay is displayed at the fourth paragraph of the Applicant's affidavit that: *the Applicant was misdirected by the clerk of the tribunal in filing an appeal.*

When the application was scheduled for hearing in this court, the Applicant invited the legal services of learned counsel Ms. Linda

E. Lugano to argue the application. Ms. Linda in a very brief submission stated that the Applicant had filed an appeal within time on 14<sup>th</sup> January 2021 in the Tribunal and followed all necessary steps, including payment of Tribunal's fee and stamping of the petition of appeal. According to Ms. Linda, after all was done in the Tribunal, the Applicant came in this court for appeal purposes, but was informed to have filed her appeal in a wrong registry.

Following the reply on wrong registry, according to Ms. Linda, the Applicant made efforts to rectify the anomaly for proper registry and when all was done, she found herself out of time hence preferred the present application. Finally, Ms. Linda submitted that the Applicant is a lay person who mixed up court registries and if the Application is granted, it will not prejudice the Respondent.

However, the submission of Ms. Linda was protested by Mr. Warehema Kibaha, learned counsel for the Respondent, who argued that the Applicant has displayed ignorance of the law which has no excuse in law. According to Mr. Kibaha, even the reason registered by the Applicant itself is not supported by proof of affidavit of the Tribunal's clerk hence remained as hearsay evidence or mere allegations against unnamed and unheard clerk. In the opinion of Mr. Kibaha, all those paragraphs which mention other persons may be struck out for want of proof of affidavit. Rejoining the submission of Mr. Kibaha, Ms. Linda briefly stated that the Applicant is a lay

person and had shown vigilance in following up her appeal and in any case there are high chances of success in an appeal stage, if the application is granted.

Reading section 41 (2) of the **Land Disputes Courts Act** [Cap 216 R.E. 2019] (the Act), I noted that the law requires applicants who are seeking enlargement of time to file appeals out of statutory time to produce *good cause*, either before or after the expiration of the forty five (45) days. The question on what constitutes *good cause* in an application for enlargement of time, the law in section 41 (2) of the Act remained silent. However, our superior court in the precedent of **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010, stated that: *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 discretionary powers in deciding for him.*

It is therefore certain and settled that the meaning of *good cause* cannot be laid down by any hard and fast rules. However, 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** Civil Application No. 2 of 2010 and **NBC**

**Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009.

In the present Application, the Applicant registered the reason of misdirection caused by the Tribunal's clerk in filing an appeal. The question before this court is therefore whether the reason could be one of the good causes in an application for enlargement of time. The reply from this court, after considering the practice and nature of our tribunals, and noting the Applicant is a lay person from Mijohoroni area of Pongwe Ward in Tanga, is obviously in affirmative. However, in the present application, the allegation towards the third person, the clerk of the tribunal, without the support of the clerk's affidavit renders the claim a mere hearsay evidence.

I understand each case must be decided on its own peculiar circumstances (see: **NBC Limited & Another v. Bruno Vitus Swalo** (supra). However, the present application has several other matters which invite questions as to whether it was brought in good faith. The record shows that the Applicant had preferred the claimed appeal either on the dot of the deadline of the forty five (45) days provided by the law, on 14<sup>th</sup> January 2012, or 15<sup>th</sup> January 2021 from the judgment of 30<sup>th</sup> November 2020. The Tribunal's receipt stamp shows that the alleged appeal was filed on 14<sup>th</sup> January 2021 whereas receipt No. 991173802431 depicts 15<sup>th</sup> January 2021, which



is out of time. This discrepancy was not resolved in the affidavit and during the hearing of the application.

Again, the Applicant is silent in her affidavit as to: when he was told by the clerk of this court on filing in a wrong registry; when she went for rectification; and how she accounted on every day of the delay. The practice of the Court of Appeal has been that the Applicant must be accountable on every day of the delay after being aware she was out of time or be prompt in bringing the application for enlargement of time.

There is a package of precedents in support of the position (see: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, **Bashiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007; **Elius Mwakalinga v. Domina Kagaruki & Five Others**, Civil Application No. 120/17 of 2018, **Lyamuya Construction Company Limited v. Registered Trustees of Young Women Christian Association of Tanzania** (supra) and **NBC Limited & Another v. Bruno Vitus Swalo** (supra).

The rationale of the requirement of diligence, promptness and accountability of days on part of the applicant in bringing application for enlargement of time 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*. The present Applicant is silent on steps taken from 14<sup>th</sup> January 2021

when her appeal was registered in a wrong registry to 9<sup>th</sup> March 2021, when the present application was lodged in this court.

I noted Ms. Linda in her final submission when rejoining Mr. Kiara's arguments, she registered the reason of high chances of success in an appeal stage. This argument will not detain this court as there is settled position on the subject that an allegation of having high chances of success in an appeal cannot 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**, Civil Application No. 29 of 2012). The reason in favour of the position is straight forward that: *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 present Application, the Applicant may be vigilant, but not diligent and prudent parson as he has shown sloppiness in

following up her appeal in this court (see: **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015). In the upshot, this application has no any merit whatsoever. It was filed in bad faith to cause unnecessary delay of enjoyment of rights on part of the Respondent (see: **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008). The practice of delaying enjoyment of rights on winning party, like present one, is prohibited by 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 in this application that the *Applicant has failed to register good cause to persuade this court to exercise its discretionary mandate in her favour* as per requirement of the law in section 41 (2) of the Act and precedent in **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd** (supra). This Application is hereby marked failed. I award no costs for obvious reason that the matter was not determined on merit.

It is so ordered.



  
F.H. Mtulya

**Judge**

19.08.2021

This Ruling is delivered in Chambers under the seal of this court  
in the presence of the Respondent, Mr. Amos Semkonda and his  
learned counsel Mr. Warehema Kibaha.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over the seal and extends to the right.

F.H. Mtulya

**Judge**

19.08.2021