

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

MISC.CIVIL APPLICATION NO. 29 OF 2018

(C/f the District Land and Housing Tribunal for Arusha, Misc. Application No. 71 of 2017, Original Land Application No. 42 of 2016)

SHABIR AHMED IBRAHIM KHAN APPLICANT

Versus

ELIA WILBARD MINJA RESPONDENT

RULING

2nd July & 9th July, 2021

Masara, J.

The Applicant preferred this application under the provisions of section 14(1) of the Law of Limitation Act, Cap. 89 [R.E 2019], moving this Court to grant him extension of time to file an appeal to this Court against the decision of the District Land and Housing Tribunal for Arusha (the trial Tribunal), in Misc. Application No. 71 of 2017, which was delivered on 8/6/2017. Although the Applicant filed this Application assisted by a learned advocate, Mr. Ipanga Kimaay, the same was filed as a Miscellaneous Civil Application instead of a Miscellaneous Land Application. I have, however, for the interest of justice, proceeded to determine the application, the anomaly stated notwithstanding.

The application is supported by the affidavit of Mr. Ipanga Kimaay, learned advocate for the Applicant. The Respondent did not enter appearance in this Court since the filing of the case, despite tireless efforts of the Applicant's counsel in searching his whereabouts. Several people were consulted including his former advocates but their efforts to notify the Respondent of the application ended in vain. Several modes of service were applied including service by affixation but yet the Respondent did not turn up. Eventually, the Court ruled out that the application proceeds ex-parte.

The genesis of this application can briefly be stated as follows: the Applicant filed land dispute against the Respondent in the trial Tribunal vide Application No. 42 of 2016. The dispute was fixed for hearing on 9/2/2017 at 13:00, but on that day and time, neither the Applicant nor his advocate entered appearance. In the event, the case was dismissed for non-appearance. On the next day, the Applicant's advocate filed Misc. Application No. 71 of 2017 in the trial Tribunal seeking to set aside the dismissal order. In its ruling delivered on 8/6/2017, the trial Tribunal dismissed the Application reasoning that the Applicant and his advocate failed to advance sufficient cause for failure to enter appearance on the hearing date. The Applicant intended to appeal against that decision, but he found himself out of time since, according to them, the ruling and the drawn order were delayed to be availed to them. Undaunted, the Applicant filed this application for extension of time so that he can file an appeal against the order of the Tribunal to this Court.

Submitting in support of the application, Mr. Kimaay contended that the trial Tribunal was wrong to decline to set aside the dismissal order. He stated that the certified ruling and decree were issued to them on 24/7/2017, after the 45 days required for filing an appeal had lapsed. Subsequently, the Applicant filed an application for extension of time in this Court but it was struck out due to omission of one of the Applicant's names. Mr. Kimaay added that considering that the ground for delay is a technical one, the current application is based on sufficient reason. He implored this Court to exercise its discretion to grant the application citing the decision in ***NBC Vs. Lucia Sixbert Chuwa***, Land Appeal No. 51 of 2010 (unreported), which has circumstances similar to the application at hand.

As I have intimated earlier on, the application is not contested since the Respondent could not be traced despite being served by affixation:

I have considered the affidavit of the advocate for the Applicant and his submissions in support of the application, the pertinent issue for determination is whether the Applicant's delay to file the appeal to this Court was necessitated by sufficient cause.

The law is settled that in applications for extension of time sufficient cause must be advanced in order for the application to be granted. This position has been upheld by both this Court and Court of Appeal in a myriad of decisions. For example, the Court of Appeal in ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 (unreported) held inter alia;

*"... although the Court's power for extending time under rule 10 of the Rules is both broad and discretionary, it can only be exercised if good cause is shown. Whereas it may not be possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion under rule 10, the Court must consider factors such as the **length of the delay, the reasons for the delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.**"* (emphasis added)

The question is whether the Applicant in this application can be sufficiently covered by the sufficient cause above explained. In paragraph 5 of the affidavit in support of the application, the learned advocate for the Applicant deponed that after the ruling was delivered on 8/6/2017, he wrote a letter to the trial Tribunal on 13/6/2017 requesting to be supplied with the copy of the ruling and drawn order so as to initiate the appeal. The documents craved for were ready for collection on 20/7/2017, but according to paragraph 6, the ruling had typographical errors, which necessitated correction by the Tribunal chairman. The ruling was rectified and it was issued to them on 24/7/2017 while the drawn order was made available on 27/7/2017. In paragraph 10 of the same affidavit, Mr. Kimaay stated that he filed Misc. Civil Application No. 83 of 2017 in this

Court on 28/07/2017 seeking extension of time but on 28/3/2018 the application was struck out since one of the Applicant's names was omitted. On 9/4/2018, he procured the copy of the proceedings and the order subject of that application.

The record shows that the instant application was filed on 17/4/2018, almost 8 days after being availed with the copy of the proceeding and order. In the circumstances, and as rightly submitted by the learned advocate, the delay was a technical delay because after the decision of the trial Tribunal, the Applicant was not idle. He filed Misc. Civil Application No. 83 of 2017 which was struck out on 28/3/2018 on technical reasons. Technical delay has been accepted as sufficient reason for extending time. In ***Fortunatus Masha Vs. William Shija & Another*** [1997] TLR 154, the Court held:

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only 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 the first appeal. In these circumstances an extension of time ought to be granted."

Further, as soon as he was issued with copies of the typed proceedings and order striking out Misc. Civil Application No. 83 of 2017 on 9/4/2018, the Applicant's advocate acted diligently, in such a way that within a week he filed the instant application. Therefore, the delay cannot be said to be inordinate. The Applicant acted diligently.

For the above reasons, the Applicant has advanced sufficient cause for the delay which warrants the grant of the extension of time sought. In the end result, the application is granted. The Applicant is granted 14 days within which to file his appeal in this Court. Since the Respondent did not participate in this application, I make no order as to costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "Y. B. Masara".

Y. B. Masara

JUDGE

July 9, 2021