

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**[LAND DIVISION]
AT ARUSHA**

MISC. LAND APPLICATION NO. 11 OF 2020

*(Originating from the decision of the District Land and Housing Tribunal for Arusha, in Misc.
Application No. 411 of 2018)*

EMMANUEL URIO APPLICANT

Versus

SIMON URIO RESPONDENT

RULING

26th May & 13th August, 2021

Masara, J.

This application has been preferred by the Applicant herein seeking to be extended time upon which he can file an appeal in this Court against the Order of the District Land and Housing Tribunal for Arusha, in Misc. Application No. 411 of 2018, that was delivered in favour of the Respondent herein on 12/11/2019. The application is supported by an affidavit deposed by the Applicant himself. The Respondent contested the Application in a counter affidavit deposed by himself as well. The application was heard *viva voce*.

Before me, both parties appeared in person unrepresented and fended for themselves. Both the Applicant and Respondent adopted their affidavits as forming part of their respective submissions for and against the application.

Submitting in support of the application, the Applicant asserted that they did not have any proceedings in the Ward Tribunal, therefore the proceedings and decision of the Ward Tribunal were forged as the purported chairman of the Tribunal has never been the said Tribunal chairman. He added that the said chairman was even arrested for pretending to be a Ward Tribunal Chairman. The Applicant maintained that even the chairman of the Tribunal and all members purported to be on record denied presence of the purported

proceedings. He argued that the Respondent demolished his 5-bedroom house in the pendency of this application, therefore he was unfairly treated. He concluded that the decisions leading to demolition of the house are illegal which need to be examined by this Court.

Contesting the application, the Respondent refuted the Applicant's contention stating that it is not true that the proceedings of the Ward Tribunal are forged. He contended that the chairman of the Ward Tribunal is the Applicant's friend, so it was resolved that another person presides over the Tribunal, but the Applicant rejected the new chairperson. He maintained that the matter proceeded ex-parte after the Applicant refused summons. According to the Respondent, every document is authentic and that the Applicant is only telling lies. The Respondent further submitted that the demolished Applicant's house is only 2-bedroom timber house which was constructed on the Respondent's plot. The elders tried to reconcile the parties herein but in vain. That is when they were advised to follow the law. They went to the District Tribunal where it was decided in the Respondent's favour. He concluded that the application is frivolous.

In a rejoinder submission, the Applicant insisted that the land was handed to him by the clan and family. He built thereon since 1980. He confidently stated that he has all the documents to prove ownership. According to the Applicant, the alleged chairman of the Tribunal related to the Respondent since they married from the same house.

I have considered the affidavits of the parties in respect of the application; I have also internalized the submissions for and against the application. The issue for determination is whether the Applicant has advanced sufficient cause to warrant him the extension of time sought.

Extension of time may only be granted where it has been sufficiently established that the delay was prompted with sufficient cause. The Court of Appeal in the case of ***Finn Von Wurden Petersen and Another Vs. Arusha District Council***, Civil Application No. 562/17 of 2017 (unreported) held the following:

"It is appreciated that Rule 10 of the Rules requires that for the applicant to be granted extension of time he must show good cause for the delay. Apparently, the provision of Rule 10 does not define what constitutes good cause. It follows that good cause, therefore, depends on the explanation of the applicant as to why he has failed to do what he ought to have done within the prescribed time."

In order for applications for extension of time to succeed, the Applicant has to adduce sufficient cause for the delay. Granting a party extension of time is in the discretion of the Court, but such discretion must be exercised judicially, according to the rules of reason and justice. This was the holding of the Court of Appeal in the case of ***Eliakim Swai and Another Vs. Thobias Karawa Shoo***, Civil Application No. 2 of 2016 (unreported).

The question is whether the Applicant in this application can be covered under the sufficient cause above explained. According to paragraph 3 of the Applicant's affidavit, the decision the Applicant intends to appeal against was delivered on 12/11/2019 by the District Land and Housing Tribunal for Arusha. On 19/12/2019, the District Tribunal issued eviction order against him. Under paragraphs 5, 6, 7 and 8 of his affidavit, the Applicant faulted the decision of Poli Ward Tribunal stating that its proceedings and decision thereon were forged and that the person who chaired the Tribunal was not the Tribunal chairman. Under paragraphs 9 and 10, the Applicant stated that he approached the District Land and Housing Tribunal in different styles including through complaints and through application for revision but his efforts ended in vain.

Under Paragraph 11, the Applicant deponed that his appeal has overwhelming chances of success. In his submission in support of the application, the Applicant mainly was faulting the decision of the trial Tribunal and the District Land and Housing tribunal for issuing demolition order, leading to demolition of his 5-bedroom house.

From the averments in the affidavit and the Applicant's oral submission, it is crystal clear that the Applicant said nothing about the delay to file his appeal on time. In other words, nothing has been said as such accounting for period of the delay. The order of the Tribunal that is intended to be appealed against was delivered on 12/11/2019 and the instant application was filed on 25/2/2020. Neither in the Applicant's affidavit nor in his written submission, the period of almost four months has been accounted for. What seems irking on the Applicant is the decision of the Ward Tribunal, which unfortunately, was not challenged.

It has been said several times that in order for the application as the one under consideration to succeed, the Applicant has to account for each day of the delay. This is the spirit in various case laws including the famous case of ***Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 (unreported) which *inter alia* held:

"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

- d) *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

Applying the above established principles in the application under consideration, it is apparent that the parameters in the cited case do not exist in the Applicant's application. As I have pointed out above, the Applicant did not attempt to account for the period of the delay. The delay of almost four months without any explanation as to what transpired makes the delay inordinate. Squarely, the Applicant under paragraph 3 stated that on 19/12/2019, the District Tribunal issued demolition order. It is contemplated that the application came as the result of the demolition order. Therefore, the Applicant has not shown diligence in pursuing his right, he rather exhibited negligence and sloppiness.

Under paragraph 11 of his affidavit, the Applicant stated that there are overwhelming chances of success in the intended appeal; however, he did not substantiate. Even in the purported intended memorandum of appeal, the Applicant seem to challenge the decision of the Ward Tribunal, whose appeal ought to have been determined by the District Land and Housing Tribunal, and not the High Court, where he intends to appeal.

It is further noted that throughout his submission and most part of his affidavit, the Applicant is faulting the decision of the Ward Tribunal stating that the proceedings and judgment thereon were forged. That cannot be given due consideration as an illegality to constitute sufficient cause for the delay, since the decision of the Ward tribunal was not challenged. In case the Applicant was dissatisfied with the decision of the Ward Tribunal, he ought to have appealed against that decision in the District Land and Housing Tribunal. For the above reasons, the Applicant has failed to account for the delay which would constitute sufficient cause for the delay.

Further, in granting extension of time, the Court has to consider the prejudice the Respondent stands to suffer if extension of time is granted. See ***Mobrama Gold Corporation Vs. Minister of Energy and Minerals & 2 Others*** [1998] TLR 425. In the application under scrutiny, both parties are at one that execution has already been carried on, the Applicant's structure has been demolished from the suit land and the land handed over to the Respondent. Thus, if the application is to be allowed, the Respondent stands to suffer loss since execution has already taken place.

Guided by the above analysis and authorities cited, this Court finds the application wanting on merits. The Applicant has failed to adduce sufficient cause that would warrant him the extension of time sought. In the end result, the application stands dismissed. This decision notwithstanding, I note the allegations raised against the integrity of the trial Tribunal records to be grave. For interest of justice, I direct that the District Land and Housing Tribunal examines the said allegations and reports its finding to the relevant authorities. This is done considering that parties herein appeared unrepresented and the fact that the Applicant may not have been aware of the purportedly forged proceedings of the trial Tribunal. Taking into account the relationship between the parties and the factual circumstances, I make no order as to costs.

Order accordingly.



Y. B. Masara

JUDGE

13th August, 2021