

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[LAND DIVISION]
AT ARUSHA

MISC. LAND APPLICATION NO. 86 OF 2020

(Originating from the District Land and Housing Tribunal for Arusha, Application No. 40 of 2014)

EVANCE SOLOMON KING'ORI 1ST APPLICANT

BENJAMIN SOLOMON KING'ORI 2ND APPLICANT

Versus

SOLOMON KING'ORI 1ST RESPONDENT

OBED JOSEPH LOREU 2ND RESPONDENT

GILBERT SHAYO 3RD RESPONDENT

TANZANIA AUCTION MART, COURT

BROKERS AND DEBT COLLECTORS LTD 4TH RESPONDENT

RULING

2nd June & 6th August, 2021

Masara, J.

The Applicants herein have preferred this application under section 14(1) of the Law of Limitation Act, Cap. 89 [R.E 2019], seeking for extension of time to file appeal in this Court against the decision of the District Land and Housing Tribunal for Arusha (the trial Tribunal) in Application No. 40 of 2014, which was delivered on 14/7/2020. The application is supported by an affidavit deposed by Mr. John Kivuyo Lairumbe, learned advocate for the Applicants. The Respondents contested the application by filing a counter affidavit deposed by Mr. Deogratias Francis, learned advocate for the 2nd, 3rd and 4th Respondents. The 1st Respondent did not file a counter affidavit as he indicated that he did not wish to contest the Application.

Brief facts leading to this application, as can be unearthed from the affidavits and annexes, are briefly as follows: The Applicants herein are the children of the first Respondent. Prior to the institution of Land Application No. 40 of 2014, the second Respondent had a case involving another piece of land against the

first Respondent in undisclosed Ward Tribunal. It happened that the case ended in favour of the second Respondent. The first Respondent was ordered to compensate the second Respondent an alternative plot or money at the market value of the said plot. In complying with the Ward Tribunal decision, and being the lawful owner of a piece of Land measuring 2 acres located at Olkereyan Village, Moshono Ward within Arusha City (the suit land), the 1st Respondent gave part of that land to the 2nd Respondent. The 2nd Respondent did not accept the piece of land given to him as he wanted a plot of land around the town. Unfortunately, the 1st Respondent had no other piece of land to offer. The 2nd Respondent filed execution proceedings in the District Land and Housing Tribunal (hereinafter the District Tribunal) in quest to execute the decision of the Ward Tribunal. The District Tribunal ordered the sale of the suit land so that the 2nd Respondent could be paid money at the market value as ordered by the Ward Tribunal. The 4th Respondent was appointed as Court broker to execute the order of the District Tribunal. The suit land was sold in a public auction on 22/4/2013, whereby the 3rd Respondent emerged the highest bidder. He bought the suit land at TZS 20,500,000/=.

The Applicants objected to the sale of the land claiming that they were given the suit land by the 1st Respondent before the clan members way back in 2007. They claimed to have been in occupation of the suit land since then as they were cultivating on the same until 22/3/2013 when they were evicted by agents of the 4th Respondent while executing the order of the Tribunal. They were therefore aggrieved by the order of the District Tribunal, and actually the sale of the suit land to the 3rd Respondent, because the sold land was not the property of the 1st Respondent.

On 14/3/2014, the Applicants instituted Land Application No. 40 of 2014 against the Respondent herein, claiming back their suit land. The District Tribunal in its

decision delivered on 14/7/2020, dismissed the Application and declared the 3rd Respondent as the lawful owner of the suit land. The Applicants intended to appeal against that decision, unfortunately they found themselves out of time prompting this Application.

At the hearing of the application, the Applicants were represented by Mr. Erick Charles, learned advocate, while the 2nd, 3rd and 4th Respondents were represented by Mr. Deogratias Francis, learned advocate. The application proceeded by filing written submissions. Both counsel for the parties adopted their respective affidavits as forming part of their submissions.

Before embarking on what was submitted by the counsel for the parties, I need to point out a fundamental observation which I did not have the opportunity to put to the learned counsels, but which need to be addressed all the same. In the course of composing this ruling, I noted that the application is preferred under section 14(1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. It has been said times and again by this Court and the Court of Appeal that section 14(1) of the Law of Limitation Act, and in essence applicability of the law of Limitation Act, is acceptable where there is no specific provision of the law applicable in such cases guaranteeing a party extension of time. The application at hand emanates from a decision of the District Land and Housing Tribunal whereby the law applicable is the Land Disputes Courts Act, Cap .216 [R.E 2019]. The proviso to section 41(2) of the above law gives powers to this Court to extend time to a party who intends to appeal against the decision of the District Tribunal out of time. That provision provides:

*"(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:
Provided 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."*

From the above, this is one of the cases where the Law of Limitation Act was misapplied. Although there was no objection from the Respondents' counsel, it was not proper for the application to be premised under section 14(1) of the Law of Limitation Act, whilst the Law regulating land matters in both the District Tribunal and this Court has specific provision to move the Court to extend time. The application ought to have been preferred under section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019].

It is unfortunate that while both parties were legally represented, this vital legal flaw was not discovered. The Respondents did not raise any objection thereto. Since that was not done, in consideration of the principle of Overriding Objective which calls the Courts to determine cases without regard to undue technicalities, I will not dismiss the application on that ground. For the sake of ensuring justice is seen to be done, I find this as a fit case where the principle can safely be applied. I therefore invoke the Overriding Objective principle and proceed to determine the application on its merits.

Submitting in support of the Application, Mr. Charles averred that the reasons for delay to file the appeal in this Court are explained under paragraphs 11, 13, 14 and 15 of the Applicant's affidavit in support of the application. He reduced the grounds into two main reasons; but in reality, he substantiated only one reason.

According to the Applicants' advocate, the appeal delayed due to what he termed as technical reasons. He argued that he filed the petition of appeal on 10/9/2020, which was on time. He did so through Electronic Filing System (E-filing). Unfortunately, he erred in citing the name of the Court. In the end result, the appeal was not admitted in time by the Deputy Registrar, due to the system itself. The learned advocate for the Applicants maintained that the error was

not self-attributed therefore the Court should not punish the parties for the error not committed by them. To support that aversion, Mr. Charles cited the case of **NMB Bank PLC Vs. William Wilfred Bajunana**, Misc. Labour Application No. 31 of 2020 (H.C Mwanza) (unreported).

According to Mr. Charles, soon after discovering that the appeal was unadmitted by the DR, and noting that he was out of time, he was prompt to file the instant application on 20/11/2020. He insisted that the delay is a technical one, which amounts to sufficient cause for this Court to exercise its discretion in extending time to the Applicants. To back up his submission, the advocate for the Applicants cited a number of cases including; **Fortunatus Masha Vs. William Shija and Another** [1997] TLR 154, **D.N. Bahram Logistics and Another Vs. National Bank of Commerce Ltd and Another**, Civil Reference No. 10 of 2017 (both unreported), **African Airlines International Ltd Eastern and Southern African Trade Development Bank** [2003] E.A and **Kalunga & Co. Advocates Vs. NBC Ltd** [2006] TLR 235.

The learned counsel for the Applicants fortified further that from 10/9/2020 when the Applicants filed their petition of appeal on time to 20/11/2020 when the instant application was filed, there is a lapse of three months and 18. Since the delay was due to the error in filing the appeal electronically, therefore the learned advocate was satisfied that each day of the delay was accounted for. To support his contention that the delay of each day has to be accounted for, he cited the case of **Bariki Israel Vs. Republic**, Criminal Application No. 4 of 2011 (unreported). He concluded by praying that the application be allowed.

Contesting the Application, Mr. Francis submitted that the reason by the Applicants' advocate that the delay was due to error in the e-filing system leading to rejection of the appeal that was filed in time is unjustified since the

Applicants cannot benefit from their own wrong. He amplified that the Applicants had ample time to file the appeal within 45 days from the day they received the certified copies of the judgment on 7/8/2020 which lasted on 21/9/2020, but they delayed for more than 100 days. Further he argued that the Applicants could have filed their appeal on time after it was rejected by the Deputy Registrar, since they still had 11 days left. According to the advocate for the Respondents, the Applicants delayed for another 56 days until 17/11/2020 when this application was filed. Therefore, the application was not made promptly, submitted Mr. Francis. He insisted that the Applicants have failed to demonstrate sufficient cause for the delay. He cited the following decisions to support his contention that sufficient cause for the delay is the *grundnorm* for extension of time to be granted: **NMB Bank PLC Vs. William Wilfred Bajwana** (supra) and **Paul Martin Vs. Bertha Anderson**, Civil Application No. 7 of 2005 (unreported).

In Mr. Francis's view, failure to cite the proper name of the Court, which led to rejection of the Applicants' appeal, is nothing but negligence and lack of diligence, which according to him can not be condoned as sufficient cause for the delay. To support that assertion, he cited the following cases: **Athuman Rashid Vs. Boko Omar** [1997] TLR 146, **Salum Saruru Nabahani Vs. Zajor Abdulla Zahir** [1988] TLR 41 and **Bharya Engeneering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported).

Mr. Francis maintained that the Applicants have not accounted for each day of the delay as propounded in **Hassan Bushiri Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) and other cases annexed to his submissions. In a conclusive remark, Mr. Deo insisted that there is no proof that the appeal was rejected by the Deputy Registrar and the Applicants did not

adduce sufficient cause for the delay. He urged this Court to dismiss the application with costs.

In a rejoinder submission, Mr. Charles faulted the Reply submissions stating that both in his affidavit and submission in chief he did not state that the delay was attributed by the reason that the Applicants were away from Arusha. He reiterated his submission in chief insisting that the reasons for the delay to file the appeal are not real or actual reasons but technical delay. The Applicants were not aware of the error in citing the Court's name, when the error was discovered, the appeal was already out of time. According to Mr. Charles, the appeal was filed on 10/9/2020 at 10:12:31, and according to Rule 21(1) of the Judicature and Application of Laws (Electronic Filing) Rules 2018, a document is considered filed if submitted through electronic filing system before the mid night EAT on the date it is submitted unless time is specified by Court. The learned advocate for the Applicants maintained that Courts do not exist to punish parties for mistakes made in the conduct of their rights; rather, Courts exist to decide matters in controversy. To buttress his argument, he cited the ***Cropper Vs. Smith*** [1840] CHD 700, ***General market Co. Ltd Vs. A. A. Shariff*** [1980] TLR 61 and ***Kassim Mangwele Vs. Republic***, Criminal Appeal No. 29 of 1990.

I have given due consideration to the submissions of the learned advocate and the rival affidavits on behalf of the parties. The issue to determine is whether the Applicants have advanced sufficient reasons warranting extension of time to file their intended appeal in this Court.

A party who seeks for extension of time to do anything that he/she ought to have done in time must adduce good/sufficient cause for the delay in order for Court to exercise its discretionary powers for the extending time. The Court will

only exercise its discretion in favour of an Applicant if it is satisfied that the Applicant has showed good cause for the delay. What amounts to good cause has been defined in a number of decisions binding to this Court. One of them is the decision cited to me by Mr. Francis, ***Bharya Engeneering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor*** (supra), where the Court of Appeal had this to say on what amounts to good cause:

*"What amounts to good cause cannot be laid by any hard and fast rule but is dependent upon facts obtaining in each particular case. As we stated in **Vodacom Foundation Vs. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (unreported); the case relied upon by the respondent, each case will be decided on its own merits taking into consideration the questions, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been explained away as well as whether there was diligence on the part of the applicant."*

In the case at hand, the Applicants have stated that the main reason for the delay to file the appeal in time was due to a technical hiccup in that the appeal was filed in time on 10/9/2020 electronically but it was not admitted by the Deputy Registrar due to the Applicants' error in citing the name of the Court. This is stated in paragraph 11 of the affidavit in support of the application. Annexure A-4 was annexed to that effect. According to the annexure, it shows that the appeal was filed on 10/9/2020 at 10:12:31 as correctly submitted by the Applicants' counsel. The Applicants' counsel therefore referred this as a technical delay.

Going by the affidavit and the submissions, it is not stated as when the notice came to their minds that the appeal was not admitted by the Deputy Registrar. This would have assisted us to know exactly the time delayed. Even annexure A-4 does not show the date it was printed out.

The judgment in respect of Land Application No. 40 of 2014 was delivered on 14/7/2020. According to paragraph 10 of the affidavit, on 7/8/2020, the Applicants were issued with certified copies of judgment and decree. Counting from that date, the appeal ought to have been lodged within 45 days from that date. It is on record that the appeal was filed on time on 10/9/2020 through e-filing system. The time to appeal counting from the date the Applicants were availed with the certified copies of the judgment and decree would last on 21/9/2020. This was conceded by the Applicants' advocate. Since time when the appeal was rejected was not specified, and considering that none of the parties have substantially proved that the Applicants were aware of the refusal on time, I give the Applicant a benefit of doubts. I do so on two premises: one, the nature and number of persons involved in of the dispute intended to be appealed against, and two, the fact that the original appeal had been filed on time, only to be rejected on a technical ground.

On the premises, and in exercise of my discretion, I find that the reasons advanced for the delay to file the appeal are sufficient. The delay is both explainable and excusable. I direct that the Applicants files their intended appeal to this Court within fourteen (14) days of the order hereof. I make no orders as to costs.

Order accordingly:




Y. B. Masara
JUDGE

6th August, 2021