

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA SUB -REGISTRY**

AT MUSOMA

MISC. LAND APPLICATION NO. 24 OF 2021

(Arising from land Appeal No. 238 of 2019 of Musoma District Tribunal)

DALMAS JONYO..... APPLICANT

VERSUS

SAMSON OWINO..... RESPONDENT

RULING

10th Septand 17th September 2021

F.H. MAHIMBALI, J

This is an application for extension of time to file an appeal out of time. It originates from the decision of Bugwema ward tribunal in land Application no. 10 of 2018 and Land Appeal no.238 of 2019 of Musoma DLHT. This application was filed by way of chamber summons under section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019 (LDCA) supported by the affidavit deponed by Dalmas Jonyo.

The applicant in his affidavit deponed that he was the appellant in Land Appeal no. 238 of 2019 at Musoma District Land and Housing Tribunal (DLHT). That, on the 17/09/2020 the DLHT decided the appeal

in favour of the respondent. He further deponed that he wrote a letter on 24/09/2020 so as to be supplied with the copy of the judgment and the copy was ready for collection on 29/09/2020. He stated that he thought the 60 days to appeal should have excluded the 29/11/2020 as per section 19(1) of the law of Limitation Act, Cap. 89 R.E 2019. Further to that, his last day of appeal, that is 29/11/2020 appeared not to be a working day hence he filed his appeal on Monday of 30/11/2020 in which he was out of time.

The respondent objected to this application through his counter affidavit and stated that it is not a requirement of law that the time used to obtain the copy of judgment should be excluded in computing time within which to appeal. He went further to state that para 5 of the applicant's affidavit is strongly disputed as ignorance of the law is not sufficient ground to extend time. He also deponed that the applicant has failed to account for each day of delay, therefore the application should be dismissed.

At the hearing of this application, both the applicant and the respondent appeared in person, unrepresented. The matter was heard by way of audio teleconference.

The applicant asked the court to adopt his affidavit as part of his

submission and went further to submit that the online filing process also contributed to his delay in filing his appeal. He prayed his application be allowed.

Replying, the respondent asked the court to adopt his counter affidavit as well to form part of his submission and that the application should be dismissed as it is meritless.

Rejoining, the applicant reiterated his earlier submission and he prayed his application be allowed.

After considering the chamber summons, supporting affidavit and the counter affidavit, it is clear that the applicant was supposed to appeal within sixty days after the impugned judgment or order as per section 38 (1) of the Land Disputes Courts Act. Failure to comply with the above section, he has to seek and obtain leave of the court for filing an appeal out of time. In this regard, the applicant was obliged to file this application. However, the grant of an extension of time is upon judicial discretion as it is not the applicant's automatic right. The applicant's duty is to establish "a good and reasonable cause". This is as held in the case of **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED [2006] TLR 235** at page 235 where the Court of Appeal held;

(i) ...the court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay on the part of the Applicant, there ought to be some kind of explanation or material upon which the court may exercise the discretion given."

It is settled that what amount to sufficient cause is not yet defined.

(See **TANGA CEMENT COMPANY LIMITED VS MASANGA AND AMOS A.MWALWANDA**, Civil application No.6 of 2001) where it was held;

"What amounts to sufficient cause had not been defined. From decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant."

However, there are factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision. The above factors were also stated in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of**

Tanzania, Civil Application No. 2 of 2010 (unreported). In addition, the applicant has to account for each day of delay.

In the case at hand the applicant's reasons for extension of time are that he was waiting for the copy of judgment and he got it on 29/09/2020 while the judgment was delivered on 17/09/2020. Furthermore on 29/11/2020 which was the last day of filing his appeal it appeared to be a Sunday. Therefore, he filed it on the next working day that is on 30/11/2020. Further, that the e-filing process contributed his delay in filing as he faced internet challenges (internet connection).

The issue for consideration by this court now is whether the application as per submissions made is meritorious. One of his reasons for delay is that he was waiting to be supplied with the copy of judgment. According to the court's record, the judgement was delivered on 17/9/2020 and he obtained the copy of the judgment on 29/9/2020 but filed it on 30/11/2020. This means that he got the copy of the judgment after 12 days. This means that, he had a total of 42 days in his hands for processing his appeal, yet he could not file it timeous.

Considering the ruling of this Court (Hon. Kisanya, J) in **Dalmas Jonjo (Administrator of the Estate of the late Zabron JonjoOrale) V. Samson Owino**, Misc Land Appeal no.02 of 2021, HC

Musoma while quoting the case of **NjumaliSingo V. MeliyoLovokieki**, Misc. Land Appeal No. 13 of 2019, HC at Arusha (both unreported) held that:

"going through the provisions of the Land Disputes Courts Act, Cap 216, R.E 2002, I have found none of provision which require the petition of appeal to be accompanied by a copy of judgement or order of the ward tribunal. Hence assertions that the appellant was supplied with necessary documents late, to my view have no legal basis."

In computing the time available for filing the appeal against the impugned decision, Hon Kisanya, J (supra) ruled that:

"the present appeal was required to have been filed on or before 14th November, 2020. The record tells it all. The petition of appeal was lodged in the first appellate tribunal on 30th November, 2020. That was a lapse of 15 days. I have noted that the copy of judgment was ready for collection on 29th November, 2020. However as stated herein, the said time used in obtaining the copy of judgment is not an excuse for failure to appeal in time".

Thus, in the current case, computation of time of 60 days, lasted on 14th November, 2020 and not 29th November 2020 as propagated. All these days have not been accounted for. This is a suggestion of ignorance of the law. It is settled that ignorance of the law has never

been a good reason for extension of time. This was provided for in the case of **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others vs The Republic**, Criminal Application No. 121 of 128 at page 5 and 6 where it held;

*"The issue here is whether ignorance of the law constitutes a good cause for extension of time. There is a plethora of authorities to the effect that ignorance of law has never been a good cause for granting extension of time. For instance, in the case of **Hadija Adama v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported) the court stated as follows: " As regards the applicant's ignorance of law and its attendant rule of procedure , I wish to briefly observe that such ignorance has never been accepted as a sufficient reason (see for instance , **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 (unreported)*

*Similar observation was made in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) in which the court stated that:*

*"As has been held times out of number, Ignorance of the law has never featured as a good cause for extension of time (see , for instance , the unreported **ARS. Criminal Application No.4 of 2011 Bariki Israel vs The Republic**; and **MZA, Criminal Application No.3 OF 2011 – Charles Salugi vs The Republic**). To say the*

least a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/ she will have nothing to offer as an excuse for sloppiness”.

The other reason for his delay is that *e filing* process contributed to his delay. He was not specific on how the process was a hinderance for him to file his appeal timeous. This court will make an assumption that he might have faced technical problems. This court will be guided by rule 24(3) and (5) of Judicature and Application of Laws (Electronic Filing) Rules, G.N 148 of 2018 that stipulates as follows;

24.(3) For the purpose of sub- rule (1), the excluded time shall not extend the limitation period for such filing under the Law of Limitation Act, or any other written law.

(5) Where party misses a filing a deadline due to technical problems referred to in sub- rule (1) the party shall move informally and ex parte to the Registrar or the magistrate in-charge not later than 15:00 hrs of the following working day for appropriate relief.

Let's say the applicant was faced with a technical problem on the 29th November, 2020 (on which date there was already a delay instead of 14th November,2020), he was supposed to inform the Deputy Registrar of the High Court timely. In the instant case the applicant has

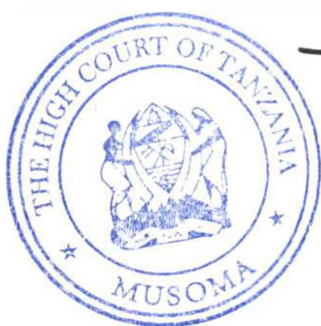
not shown when exactly he faced the technical problem and what measures he took to notify the Deputy Registrar. Nevertheless, the "*e-filing*" system is not applicable to filing of appeals originating from the ward tribunal as filing of an appeal as a matter of law in terms of section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019 is still being done manually at the lower tribunal in which the e-filing rules does not apply.

That said, this reason is also devoid of merits.

All said and done, all the reasons deposed by the applicant are bankrupt of merits as they failed to show good and reasonable cause and he has also failed to account for each day of delay. Therefore, this application is devoid of merits and it is dismissed with costs

It is so ordered.

DATED at MUSOMA this 17th day of September, 2021.




F. H. Mahimbali

JUDGE

17/09/2021

Court: Ruling delivered this 17th day of September, 2021 in the
Absence of the Applicant, but in presence of the Respondent and Miss
Neema P. Likuga – RMA.



F. H. Mahimbali

JUDGE

17/09/2021