

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

**IN THE HIGH COURT OF TANZANIA AT DODOMA DISTRICT
REGISTRY**

AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 29 OF 2020

*(Originating from Singida District Land and Housing Tribunal
in Application No.90/2016)*

KIJANGAI GHUMPI.....APPLICANT

VERSUS

PASKALI MIANGA NTANDU }RESPONDENTS
ALLY SOFE TAGHAMA }

RULING

Date of Ruling: 08.09.2021

Dr. A. Mambi, J.

This is an application for an extension of time to appeal out time made under section of the Land Disputes Courts Act, Cap 41 [R.E. 2019] law. The applicant in his application supported by an affidavit sought for an extension of time to challenge the decision of the District Land and Housing Tribunal (DHLT) for Singida in Application No.90 of 2016.

During hearing, all parties prayed to argue by way written submissions and this court ordered parties to do so.

The applicant submitted that he has filed an application for extension of time to appeal out of time against the decision of the DLHT. He argued that his application was once struck by this court and he had to refile his application. The reasons for the delay as advanced in the applicant's affidavit is that he was waiting for an advice from his advocate as he was not aware if he was supposed to file revision or an appeal.

In response, the respondents submitted that the application has no merit since there is no any sufficient reasons. They argued that the applicant has failed to count for each day of his delay. They argued that the delay of one year cannot be justified.

I have considerably perused the documents such as affidavit and other documents on the file and considered the submissions made by both parties to find out whether this application has merit or not. The key question to be determined and answered is whether the applicant has advanced sufficient reason in her application or not.

It is trite law that where any party seeks for an extension of time to file application, or an appeal out of time he/she is required to advance sufficient reasons in his/her affidavit before the court can consider and allow such application. This was clearly underscored by the court in **REGIONAL MANAGER, TANROADS KAGERA V.**

**RUAHA CONCRETE COMPANY LTD CIVIL APPLICATION NO.96
OF 2007 (CAT unreported).** The court in this case observed that;

“the test for determining an application for extension of time, is whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted”.

This means that in determining an application for extension of time, the court has discretion to determine if the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. In other words, the court need to take into account factors such as reasons for delay that where the applicant is expected to account of cause for delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to shown such reasons were operated for all the period of delay.

My perusal from the records has not seen any sufficient reason for application of an extension of time. The applicant is claiming that he was waiting for an advice from the lawyer as he was not aware on the legal producers. It appears the applicant thought that being a layman the court can consider his application even if he delays in filling his document. It is trite law that ignorance of law is not a defence at any rate. This is clearly underscored in **OLMESHUKI KISAMBU V. CHRISTOPHER NAINGOLA CIVIL APPLICATION NO 18 OF 1998**, where the court held that:-

"At any rate there is no provision in the rules in which the fact of one being a layman or ignorant is made a special circumstance or exception for extending time in which to appeal".

It should be noted that it has now taken almost one year since the DLHT made its decision on 09/01/2019 but the applicant has never made an effort to appeal and there is no reason as to why he stayed for such a long time. In my view this is long time that cannot be easily tolerated by the court. The records further reveals the applicant was filed a similar application to this court but that application was struck out but the applicant stayed for almost 35 days without making any effort to appeal. This court in **ADIS KON VERSUS JOSEPH GEOFREY, MISCELLANEOUS LAND CASE APPLICATION No. 19 OF 2014, HIGH COURT OF TANZANIA AT SUMBAWANGA (unreported)** had once observed that It is clear that **ADIS KON VERSUS JOSEPH GEOFREY, MISCELLANEOUS LAND CASE APPLICATION No. 19 OF 2014, HIGH COURT OF TANZANIA AT SUMBAWANGA (unreported)** had once observed that:

"making a mistake is not mistake, but repeating similar mistake is a gross mistake. The record show that this is the second time the counsel is making similar mistakes. It does not require much foresight to appreciate that this is not a moot court but a court of law".

In my view waiting for legal advice for 35 days cannot be said to be the sufficient reasons for delay as the applicant was required to show what blocked or bared him from filling his application

immediately after the ruling was made. Indeed the applicant in his affidavit has not counted each day of his delay.

The Court of Appeal of Tanzania in **BARCLAYS BANK TANZANIA LTD VERSUS PHYLICIAN HUSSEIN MCHENI**; Civil Application No 176 of 2015 at Dar es Salaam (Unreported) where it was held,

“Among factors to be considered in an application for extension of time under Rule 10 of the Court of Appeal Rules, 2009 are:-

*(a) The **length** of the delay*

*(b) The **reason of the delay** – whether the delay was caused or contributed by the dilatory conduct of the applicant?*

*(c) Whether case such as whether there is a **point of law or the illegality** or otherwise of the decision sought to be challenged.”*

As underscored by the Court in **MEIS INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP; Misc Commercial Cause No. 243 of 2015**: High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported) which was cited by the applicant respondent that:

“(i) An application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.....”

I am aware that an application for extension of time is entirely in the discretion of the Court to grant or to refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. See **MEIS**

**INDUSTRIES LTD AND 2 OTHERS VERSUS TWIGA BANK CORP
(Supra).**

Looking at the affidavit by the applicant, I have not seen sufficient reasons for her delay as to why he stayed for more than one month after his application was struck out without filling his application. The applicant has also failed to advance his reasons as to why he stayed for one year without filing his appeal. The applicant spending time in filing review instead of appeal cannot be a justification for his delay. The applicant under the affidavit did not indicate any sufficient reasons for the delay. I am of the considered view that, in the absence of really sufficient reasons, one year was a long time for one to be considered for an extension of time.

Pursuant to the foregoing, I am of the firm considered view that this application has no merit since the applicant has failed to present sufficient reasons for his application for an extension of time under the application at hand. In the view of aforesaid, this application is devoid of merit and it is accordingly dismissed. Parties to bear their own costs.


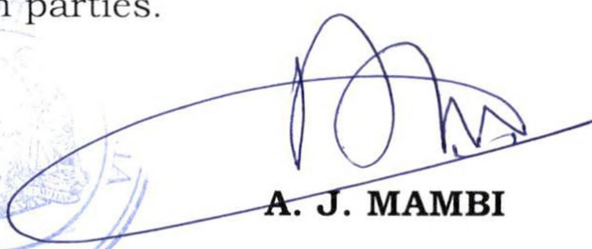


A. J. MAMBI

JUDGE

08.09. 2021

Ruling delivered in Chambers this 8th day of September, 2021 in presence of both parties.



A. J. MAMBI
JUDGE

08.09. 2021

Right of appeal fully explained.



A. J. MAMBI
JUDGE

08.09. 2021