

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 33 OF 2021

*(Originating from Dodoma District Land and Housing Tribunal in
Application No. 191 of 2015)*

MARIA MSOTE.....APPLICANT

VERSUS

OBADIA SALEHE

DODOMA CITY COUNCIL

.....**RESPONDENTS**

RULING

Date of Ruling: 15.09.2021

A. Mambi, J.

This is an application for an extension of time to appeal out time under section 41(1) and (2) of the Land Disputes Courts Act, Cap 216 [R.E. 2019]. The applicant in her application supported by an affidavit sought for an extension of time to challenge the decision of the District Land and Housing Tribunal for Dodoma (DLHT) in Application No. 191 of 2015.

During the hearing the Respondent were represented by the City Solicitor while the applicant appeared unrepresented.

The applicant briefly submitted that she has filed an application for extension of time to appeal out of time against the decision of the DLHT. She argued that she was sick that is why she failed to appeal within time. The reasons for the delay as advanced in the applicant's affidavit is that the delay was caused by the respondents who filed the bills of costs and she has overwhelming chances of winning her appeal.

In response, the respondents' City Solicitor submitted that the application has no merit since there is no any sufficient reasons. She argued that the applicant unreasonably stayed for almost one year without appeal. She argued that the argument by the applicant that she was sick show that she is introducing the new ground which is not under the affidavit.

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.

The practice and position of law is clear 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 for cause of delay of every day that passes beyond the aforesaid period, lengthy of the delay that is to be shown such reasons were operated for all the period of delay.

Having perused the records such as affidavit, I have not come across with any sufficient reason for application of an extension of time. The applicant is claiming that it is the respondent who caused the delay. This argument has no merit since the respondent has nothing to do on the appeal by the applicant. The applicant in her affidavit has also stated that the reason for application is based on the fact that she has overwhelming chances of winning her appeal. However, the applicant has not addressed the court as to what makes her to believe that she has overwhelming chances of winning her appeal. Assuming that there would be overwhelming chances of winning her appeal as claimed by the applicant, but the applicant in her affidavit has to state the reasons as to why she delayed to

appeal for such a long time that is almost one year. During hearing, the applicant introduced a new ground that she was sick, yet she failed to submit documentary evidence from the hospital, dispensary or health centre to show for how long she was attending medical treatment. I am of the considered opinion that, at any rate there is no provision in the rules in which the fact of one believing she/he has overwhelming chances of winning an appeal or being sick without documentary prove 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 21/05/2020 but the applicant has never made an effort to appeal and there is no reason as to why she stayed for such a long time. In my view this is long time that cannot be easily tolerated by the court. 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 she stayed for one year after the DLHT made decision without filing her application. The applicant has also failed to advance his reasons as to why she stayed for one year without filing his appeal. The applicant argument that she was sick without showing documentary prove is a mere afterthought. 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 her application for an extension of time under the application at hand. In the view of aforesaid, this application is

unmerited and it is accordingly dismissed. Parties to bear their own costs.



A.J. MAMBI

JUDGE

15.09.2021

Ruling delivered in Chambers this 15th day of September, 2021 in presence of both parties.



A.J. MAMBI

JUDGE

15.09.2021

Right of appeal fully explained.



A.J. MAMBI

JUDGE

15.09.2021