

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPLICATION NO. 16 OF 2021

*(Originating from Application No. 265 of 2016 District Land
and Housing Tribunal for Moshi)*

ASHA RASHID KIMARO 1ST APPLICANT

RAMADHANI S. KIMARO 2ND APPLICANT

HAMZA RASHID SALIM 3RD APPLICANT

GERALD TARIMO 4TH APPLICANT

VERSUS

MWANAHAMISI .I. KIMARO RESPONDENT

RULING

MUTUNGI .J.

The applicants are seeking for extension of time to lodge their appeal out of time to this Court against the decision of the District Land and Housing Tribunal for Moshi at Moshi (the trial tribunal) delivered on 30th October, 2020 in Application No. 265 of 2016. The application is made under **section 41 (2) of the Land Dispute Courts Act, Cap 216, R.E. 2019** and supported by the 3rd applicant's sworn affidavit. The respondent thereto did file a counter affidavit accordingly. During hearing which was done by way of written submissions, the applicants were

represented by advocate Elizabeth Maro Minde whereas the respondent appeared in person and unrepresented.

Supporting the application, advocate Minde submitted, the decision to be appealed against was delivered on 30th October, 2020. The applicants proceeded to apply for the requisite appeal documents. They were accordingly supplied but in due course they noticed some omissions. As a result they sought for the necessary corrections, however, it was until 25th January, 2021, (86 days later) that the applicants were issued with copies of judgment and proceedings of the corrected version. Unfortunately, they thereafter encountered financial constraints due to economic hardships for them to engage an advocate, thus, filed the current application on 5th May, 2021, (97 days latter) after receipt of the necessary copies.

It was advocate Minde's further submission that, the dispute is between family members which has caused tension therein. To cap it all, the respondent has been a "trustee" of an adult. Therefore, there being triable issues this court is mandated to hear the appeal. She thus prayed once the applicants have established sufficient cause for extension, then the same be granted. In support therefore she cited the case of **Hashim Mohamed Mnyaha Vs. Mohamed Nzai & 3 Others, Misc. Land Application No. 45 of 2019.**

In response, the respondent submitted, in order for extension of time to be granted sufficient reasons have to be provided for as underscored in the cases of **Regional Manager Tanroads Kagera V Ruaha Concrete Company Ltd Civil Application No. 96 pf 2007** and **Mumello V Bank of Tanzania [2006] E.A. 227.** She argued, in the current application, the applicants have neither established a sufficient cause nor have they accounted for each day of delay. The fact that the applicants did not have enough money to engage an advocate due to economic hardships is not a valid sufficient cause. More so, allowing such reason will cause chaos and endless litigations in Courts of law that is why rules and regulations have to be adhered to. She therefore prayed the application be dismissed with costs.

In her brief rejoinder, advocate Minde maintained her stance that, there were sufficient reasons for delay that warrant the grant of the application and each day of delay has been accounted for.

After I have gone through the rival arguments, the only issue for determination is whether there is sufficient reason to grant this application. It is a trite principle that, an application for extension of time is entirely in the discretion of the court to grant or otherwise. In determining good cause for granting extension of time, among others, the applicant must account

for all the period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take. (See **Lyamuya Construction Co. Ltd V. Registered Trustees of YWCA of Tanzania, Civil Application No. 2 of 2010** and **Eliakim Swai & Another V Thobias Karawa Shoo, Civil Application No. 2 of 2016 (CAT) at Arusha-both Unreported**).

According to the applicants' submission, the main reason for the delay was the fact that, after they received rectified copies of proceedings and judgment, they were faced with financial constraints and it took them 97 days to get sufficient funds to engage an advocate. I have keenly and thoroughly perused the attached annexures and the Corresponding Affidavit, my reading of the same takes one on the following journey of the sequence of events. The judgment subject to be challenged was delivered on 30/10/2020. Thereafter the applicants through their advocate (BS Associates) wrote to the trial tribunal requesting to be supplied with copies of appeal documents which were dully supplied on 11/12/2020. After receipt of the same, it was observed there were some glaring defects, which the trial tribunal was dully notified of on 15/12/2020 and accordingly rectified. The rectified copies were supplied on 25/1/2021, it is then that the applicants as

per paragraph 11 of the corresponding affidavit allege they had difficulties to consult their lawyer. For ease of reference the same is as hereunder: -

"That time from 25/1/2021 up to the date of filing this application was inadvertently lost due to the facts that the applicants had to consult their lawyer who in fact at that material time had other assignments out of Moshi."

In the settled opinion of this court, if the time spent to get the proper copies is excluded, then what followed as per paragraph 11 was not due to financial constraints but unavailability of their advocate. In the case of **Mbogo V Shah [1968] E.A** the defunct Court of Appeal for Eastern Africa had the following to say: -

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

The length of delay of 97 days was inordinate in the given circumstances bearing in mind, in Tanzania there are a number of Legal Aid Associations/Organisations which help people with different kind of disputes including those who

cannot access legal representation. In view thereof, had the applicants been diligent enough and desirous of pursuing their rights as their learned counsel argued, they wouldn't have waited for 97 days to file the current application.


In light of the above, it is crystal clear the applicants have demonstrated the highest degree of negligence and sloppiness as was held in the cases of **Lyamuya Construction (supra)** and **Eliakim Swai (supra)**.

For the reasons stated in the ruling, I find the applicants have failed to account for each day of delay hence the application is therefore dismissed. Considering the relationship of the parties herein, I make no order as to costs.

It is so ordered.



B. R. MUTUNGI
JUDGE
07/10/2021

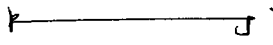


Ruling read this day of 7/10/2021 in presence of Miss Minde for the Applicants and in absence of the Respondent dully notified.



B. R. MUTUNGI
JUDGE
07/10/2021

RIGHT OF APPEAL EXPLAINED.


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JUDGE
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