IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISCELLANEOUS LAND CASE APPLICATION NO. 11 OF 2021

KANTI DANIEL MWANGA.....1ST APPLICANT

NOVATUS MLINGI.....2ND APPLICANT

Versus

REGINALD ANSELIM MASSAWE.....RESPONDENT

RULING

Last Order: 7th Sept, 2021

Date of Ruling:12th Oct, 2021

MWENEMPAZI, J.

The applicants Kanti Daniel Mwanga and Novatus Mlingi have moved this court Pursuant to section 14 (1) of the Law of Limitation Act, [Cap. 89 R.E 2019] and any other enabling provisions of the law seeking for an extension of time to file appeal before this court against the decision of the District Land and Housing tribunal for Moshi at Moshi in Land Application No. 45 of 2016. The application was supported by applicants' joint affidavit. Opposing the application the respondent filed a counter-affidavit to that effect.

On the day set for hearing the applicants prayed for the case to be heard by way of written submission since they had no legal representation. There being no objection from the respondent, this court granted leave for the parties to proceed by way of written submission to be filed on the dates as ordered.

Submitting in support of the application the applicants stated that the delay to appeal out of time was caused by the preliminary objection raised by the counsel for the Respondent which led to the striking out of the appeal. They argued that the striking out of the appeal did not finish the case thus this is a good cause for the court to grant their prayer for extension of time. They contended that this is the reason which led them to fail to appeal in time. Advocating for a good cause they submitted that there is no hard and fast rule in defining good cause but in determining good cause the court has to consider circumstance of each case.

Submitting further, the applicants cited the provision of Article 107A (2) (e) which provides that in delivering decisions courts shall dispense justice without being tied up with technicalities which may obstruct dispensation of justice. Also, they quoted the case of **CROPPER vs. SMITH (1884) 26 C.L.D 700 at pg. 710** where it was held that:

"it is a well-established principle that the object of courts is to decide the rights of parties and not to punish them for the mistakes they made in conduct of their rights. I know of no kind of error or mistake which if not fraudulent or intended to overreach, the court ought to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy." (Lord Bowen).

Concluding their submission, the applicants submitted that failure to grant the prayer sought, injustice will be occasioned to both parties but by granting the prayer sought it will facilitate justice to be done to the parties by according them opportunity to be heard.

Responding to the submission, the respondent stated that extension of time is not automatic or a right but good cause must be shown for delay. He submitted that applicants' appeal was struck out but they remained silent for 80 days before they filed this application. He argued that applicants' constitutional right to be heard was given at the trial and after the ruling they went into a deepest slumber hence the present application is barred by the law for being brought lately and not promptly.

The respondent has submitted further by stating that it is a settled principle that where the time limited by the rules has expired, sufficient reason should be shown for the delay as it was stated in the Court of Appeal Case of **Allison Xerox Sila V. Tanzania Harbour Authority**, Civil reference No. 14 of 1998, Court of Appeal of Tanzania at Dar es salaam.

The respondent submitted further that the applicants were not diligent enough in making follow up of their matter thus he argued that there was no good reason for delay advanced by the applicants. He added that the applicants were merely seeking sympathy for their failure to utilize the prescribed time. He thus submitted that the application is without any merit so he prayed for the dismissal of the same.

The respondent went on submitting that the applicants had in their possession all the necessary copies needed for appealing since 11th September 2020. He therefore questioned why they filed the application on 3rd May 2021. It was the respondent's further submission that there is no law which provides that it is mandatory to attach a copy of a ruling which was struck out in a previous appeal in seeking extension of time to appeal but the only mandatory requirement is to attach a copy of the Judgment and Decree. He argued that waiting for copies of documents which are not

mandatory to be attached in an appeal or application is not a ground for extension of time to appeal. He supported his argument with the case of **GREGORY RAPHAEL v. PASTORY RWEHABULA [2005] TLR 99**. He argued further that the appellants' excuse that they were waiting for a copy of ruling which was not mandatory to attach was to him a lame excuse which was baseless.

Further contesting the applicants' submission, the respondent argued that the applicants have not accounted for each day of delay. He submitted that it is a settled principle of law that when seeking extension of time, one must account for each day of the delay. He submitted that the applicants have not explained what they were doing from the day the appeal was struck out on 11th February, 2021 to the day the application was filed on 3rd May, 2021. He contended that the time that lapsed up to the day when the present application was filed is 80 days and that when the applicants received the copy of the ruling since 22nd February, 2021 up to 3rd May, 2021 is a period of 70 days. He was of the view that the period of 80 or 70 days taken by the applicants to prepare for filling the application is unreasonable time and purely inordinate.

The respondent further cited the case of **Bushiri Hassan V. Laatifa Lukio Mashayo, Civil Application No.03/2007** whereby the Court emphasized on accounting for the delay in filing timely application. The respondent further referred to a number of authorities to support his submission including the following cases; **HASHIMU MADONGO AND OTHERS v. THE MINISTER FOR TRADE AND INDUSTRIES** Civil Application No. 13/1999 (unreported), **ZILAJE v. FEMBERA** (1972) H.C.D n.3, **TANZANIA FISH PROCESSORS LTD v. CHRISTOPHER LUHANGULA** Civil Appeal No.16/1999 (unreported). The respondent was of the view that the applicants are coming to court at the time when they choose to do so. He also made further reference to the case of **LYAMUYA CONSTRUCTION v. BOARD OF TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA Civil Application No.2 of 2010** which set the guidelines for what should be considered as sufficient cause for granting extension of time. He then stated that the Applicants have not given any explanation of what they were doing since they collected the copy of the decision they were waiting for although it is his submission that the copy of the ruling was not necessary at all to be attached anywhere.

In his final submission the respondent stated that the intended appeal has no chances of success and that the application had been brought to prevent him from executing his decree and enjoy the fruits of his victory which he had been fighting for since 2016. Based on his submission he prayed for the application to be dismissed for failure by the applicants to adduce good reasons to warrant this Court to exercise its discretion to extend time within which they could file an appeal.

Before concluding his submission, the respondent brought into this court's attention another issue that the applicants had brought the present application under a wrong provision of the law. It was his submission that the provision of section 14(1) of the Law of Limitation Act, Cap. 89 R.E. 2002 was wrong provision to be used and that the proper provision would have been section 41(2) of the Land Disputes Courts Act Cap 216 R.E. 2019. He argued that the delay by the applicants was contributed by their own negligence of engaging unqualified legal personnel that is why such errors were made. The respondent finally urged this court to find that the application is devoid of merits and so it should be dismissed with cost.

Rejoining the submission, the applicants reiterated their submission in chief and prayed before this court that the reasons adduced in their affidavit be

adopted to form part of their submission. The applicants stated further that they were prevented from lodging the appeal on time after their previous appeal was struck out and although there was no need to attach the ruling since the time to appeal had already lapsed, they were required to seek extension of time before lodging another appeal.

The applicants maintained that their intended appeal has a chance of success because the proceedings, judgment and decree subject of appeal was tainted with illegality. They contended that claim of illegality of the challenged decision constitutes sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant under the rule to account for delay. Finally, it was the applicants' prayer that the application be granted in order for the appeal to be heard for the interest of justice.

After going through the application and supporting affidavits together with submissions from both parties, the issue to be determined is whether the application before me has merit. Before discussing the merits of the application, I found it appropriate to first determine the issue which the respondent raised at the end of his submission concerning whether this court has been properly moved. It is the best practice for the court to first check

if it has been properly moved to determine the motion before it. This can be gathered from the Chamber Summons whereby the provisions of the law presumably giving the Court its powers and mandate to grant the reliefs or remedy requested are cited.

The present application for extension of time has been brought under section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002. But this being a land matter as the respondent submitted, the proper provision is section 41 (2) of the Land Disputes Courts Act, Cap. 216 R. E. 2019. Before this provision was in place that is prior to 20th May 2016, there would have been no problem granting the application under section 14 (1) of the Law of Limitation Act. However, this being a land matter and there being a specific law governing the same, the application of section 14 (1) of the Law of Limitation Act, Cap. 89 R.E. 2002 is of no use in the premise. It is thus clear that this Court has therefore not been properly moved. That notwithstanding I have also noted that the applicants in their chamber summons although they cited section 14(1) of the Law of Limitation Act [Cap 89 R.E 2019] they also added a clause '*and any other enabling provision'.* This in my view can be considered as including the provision of other laws that gives this court power to grant the prayers sought in the application. Therefore, based on

this I think it is appropriate to consider the provision of section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E. 2019] being other enabling provision for this matter.

Now moving on to the merits of the application. There is a plenty of decisions on what the Court should look at in granting or not granting the application for extension of time. Besides discretion bestowed upon the Court which should be exercised judiciously, it is equally necessary that the Court is presented with information or reasons as to why there was a delay in timely filing the appeal.

Having carefully gone through the submissions I was not convinced that the applicant had presented a good reason as to what caused the delay in timely filing of the appeal. In their affidavit which they urged to be adopted and made part of their submission clearly stated that they lodged their appeal within time however the same was struck out whereby in the circumstances, the time to lodge another appeal had lapsed hence the need to apply for extension of time before lodging another appeal.

Although the reason for delay in filing another appeal was explained by the applicants, they however failed to give an account of time taken before this

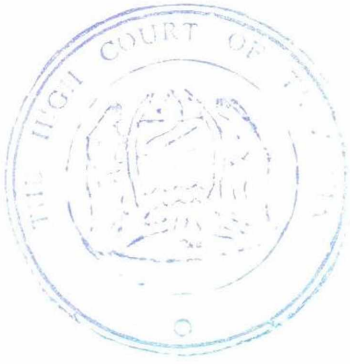
application was lodged. It is true that they awaited to be availed with a copy of the ruling but as rightly argued by the respondent they did not explain what they were doing from 22nd February 2021 after they were in receipt of the copy of the ruling until 3rd May, 2021 when they lodged the present application which is almost 70 days in total. Failure to account for these days leaves us with an assumption that there was lack of seriousness or negligence on their part as submitted by the respondent something which this court is not going to close its eyes and pretend not to see.

The applicants also alleged the issue of illegality as another reason for the application for extension of time however this was argued in their rejoinder submission which does not allow the respondent an opportunity to respond on the matter. For that reason, I find this issue not worth discussing as it is in my view an afterthought which the applicants are trying to adduce after failure to account for delay.

The law under section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 requires for the court to grant extension of time provided that good cause is advanced to justify the delay. It is my considered opinion that the applicants did not account for each day of the delay; which means they failed to adduce sufficient reasons for the delay and thus I find this application

devoid of merits and consequently proceed to dismiss it with costs. It is so ordered.

Dated and delivered at Moshi this 12th day of OCTOBER, 2021



T. MWENEMPAZI
JUDGE