

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA
(LAND DIVISION)**

APPELLATE JURISDICTION

LAND APPLICATION NO. 40 OF 2021

(Arising from Misc. Land Application No. 19/2021 of the High Court Kigoma)

NYAMUNINI S/O NTARAMBIGWA..... APPLICANT

VERSUS

SIMONI S/O KIKOTI..... RESPONDENT

R U L I N G

22/11/2021 & 01/12/2021

L.M. MLACHA, J.

This application seeks to extend the time within which to lodge an appeal against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Land Appeal No. 82 of 2016. The decision was made on 13/07/2020 (Chinuku Chairperson). The applicant could not lodge his appeal in time. He instituted Miscellaneous Application No. 48 of 2020 seeking extension. This court (Matuma J.) granted the application on 30/10/2020. He was given an extension of 21 days. He could not lodge the appeal within the extended time. He was late again. He came with another application, Misc. Land Application No. 19 of 2021 seeking a second

extension. That application was found to be improperly before the court for being signed and brought by a person who is not the applicant. It was struck out hence the present application.

At the hearing, the applicant was represented by Ms. Edna Aloyce Advocate, while the respondent appeared in person. Counsel submitted that the applicant never sat addle at home. He was fighting in court for all the time and thus nowhere to blame. She referred the court to **Tumsifu Anasi Marefu v. Luhende Jumanne Selemani**, Miscellaneous Land Application No. 91 of 2017 (H/C Tabora) for reference on the point. He went on to submit that what appeared in court was a mere technical error which should not defeat justice. She referred the court to **Bank M (Tanzania) Ltd v. Enock Mwakyusa**, Civil Application No. 520/18 of 2017 to support the view, submitting in reply, the respondent said that the applicant was given 60 days but could not take any steps to lodge the appeal within the period. He argued the court to dismiss the application saying that it is now one year, 3 months and 18 days since the decision was made. He added that it is now 9 months since the last dismissal order.

Submitting in rejoinder, Ms. Edna Aloyce said that the applicant was given 21 days but could not lodge the appeal due to the negligence of his advocate,

not him. That also applies to the application which was struck out. He is nowhere to blame, counsel submitted.

I had time to read the decisions cited and the record. I have no problem with the decisions. They state the position of the law as put forward but with respect, I find them not useful to the problem before me. In an application of this nature, the court has to look at the period of delay and see if the applicant has made an account each day of delay. The length of the period may not be an issue. The crucial issue is whether there has been an account for each day of delay and no negligence on the part of the applicant. The applicant include his counsel, for as a general rule, a party and his counsel are deemed to be one because their mission is the same.

The decision of the district court was made on 13/07/2020. The present application was lodged on 16/08/2021. There is a gap of 12 months and 3 days. In between, as pointed out, we have two applications which were made before this court; Miscellaneous Land Application No. 48/2020, which sought extension of time and which was granted, giving an extension of 21 days and Miscellaneous Land Application No. 19 of 2021 which was seeking another extension. The later was struck out on grounds of personation on

the part of the applicant's son who signed and executed documents on behalf of his father, the applicant contrary to the law.

Counsel argues that the applicant did not sit iddle at home. He was active in court fighting in the applications. He cited authorities which support the view that where there is evidence that the applicant did not sit iddle the application should be granted. I have considered his view, but with respect, I don't agree with her.

Looking at the flow of events, one can see clearly that the applicant was not busy in court throughout. He also appear to have been negligent for failing to lodge the appeal after getting orders of extension of time. Much as it is correct that he had been in court in the first application, he was not in court in the second application, which was filed negligently by his son. He cannot be said to have been in court in the second application.

Further, there is no explanation given to show why he could not file his appeal after being given an extension of 21 days. Counsel wants me to believe that the one who was negligent was his former counsel, not him, but as I have pointed out, you cannot separate an advocate from his client in a situation like this. Acts of a counsel are acts of the client because he acts

on his instructions. You cannot say that it is the counsel who was negligent and leave the applicant. If that is allowed it can cause endless litigations. No one will accept a court decision. It will cause a crisis in the administration of justice.

With that in mind, I find that the applicant has failed to assign good reasons to justify the delay. The application is accordingly found to be baseless and dismissed with costs. It is ordered so.



L.M. Mlacha

Judge

01/12/2021

Court: Ruling delivered in the presence of the Ms. Doto Banga Advocate for the applicant and the respondent present in person.



L.M. Mlacha

Judge

01/12/2021