

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT MOROGORO**

MISCELLANEOUS LAND CASE APPLICATION NO. 285 OF 2021

(Originating from Land Appeal No. 99 of 2014, High Court of Tanzania, Land Division
- Dar es Salaam - Before Ndika, J. (As he then was))

LAURENT MARTIN MPEKA APPLICANT
VERSUS
BETHA JOHN GITA RESPONDENT

R U L I N G

Date of last order: 11.11.2021

Date of ruling: 29.11.2021

M. J. CHABA, J.

This application has had a chequered history. The applicant, Laurent Martin Mpeka according to the court records has been attempting to file different applications for at least five times and all have been ended to be struck out for being incompetent. In a bid to pursuit for what he believes to be his right, he has once again knocked the court's door seeking for a court's mercy through her discretionary powers to access such a right.

Indeed, the applicant has filed the instant application seeking for enlargement of time within which to file an application for leave to appeal to the Court of Appeal subject to an order of the court dated 8th November, 2018, where an order for leave to appeal out of time was granted by this Court via **Misc. Land Application No. 988 of 2017**

(De Mello, J. - As she then was). The application has been preferred under Sections 93 and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. It is supported by an affidavit sworn by the applicant.

It is on record that on the 8th November, 2018 the applicant applied and was granted an extension of time by this Court (De Mello, J.) but, due to some reasons which will be revealed shortly, the time within which he had to exercise his remedy expired even before could properly file the same.

For better appreciation of the factual setting giving rise to this application, I find it apposite to give a brief background of the matter.

The story is like this; before the District Land and Housing Tribunal for Morogoro District at Morogoro (the DLHT); the respondent herein, Bertha John Gita Acting as the Administratrix of the estate of her deceased sister Josepha John Gita, unsuccessfully sued the applicant, Laurent Martin Mpeta via an application filed and registered as **Land Application No. 44 of 2013** for specific performance of a contract for the sale of landed property described as Plot No. 343, Block J, Kihonda Morogoro between the applicant and the deceased. It is on record that the respondent specifically sought the trial tribunal to compel the applicant to pay Tanzanian Shillings 1,727,000/= being payment of stamp duty and capital gain tax on his sale on the suit property to the deceased so as to allow for the title to the said property to be transferred to and registered as part of the deceased's estate. In addition, the respondent prayed for an award of Tanzanian Shillings 500,000/= as punitive damages against the applicant for his refusal to pay the taxes something caused inconvenience to the respondent.

In her final verdict, the DLHT entered judgment for the applicant, Laurent Martin Mpeka and declared that; **One**, it restored the parties to the sale agreement to their respective original positions before entered into that agreement, **Two**; it gave an order to the effect that down payment of Tanzanian Shillings 10,000,000/= be recouped by the respondent from monthly rent collected from letting the suit property at the rate of Tanzanian Shillings 260,000/= for five years and **Thirdly**; the suit property be placed in possession of the applicant and that the prayers by the appellant for damages were dismissed.

The respondent was unhappy with the decision of the DHLT and therefore she preferred an appeal before this Court, Land Division (Ndika, J. (As he then was)), registered as **Land Appeal No. 99 of 2014** aiming to explain her grievances. At the end of trial, the Court - Land Division allowed the appeal and set aside the trial tribunal's judgement and decree. The Court entered judgment for the respondent to the effect that the applicant had to pay Tanzanian Shillings 1,727,000/= as stamp duty and capital gain tax and facilitate transfer of the right of occupancy over the suit property to the deceased's estate.

Aggrieved by the decision of this Court – Land Division in **Land Appeal No. 99 of 2014**, the applicant appears to lost direction as a result he began filing different applications or cases before the court or different platforms seeking for various redress as indicated in his sworn affidavit and the written submissions in opposition. He kept on endeavouring on trial and error blindly for about seven (7) years now whereby not less than five applications have been instituted before the Court without success except one. Indeed, he pursued by himself, but all actions he made to file his applications or cases from 2018 to 9th

June, 2021 were found to be incompetent and ended on being struck out by the Court.

As indicated above, the fruitful application was **Misc. Land Application No. 988 of 2017** dealt by this Court (De Mello, J.) where the applicant applied for the following orders:

1. Extension of time within which to lodge notice of appeal.
2. Extension of time to file an application for leave to appeal against the ruling of this court (Ndika, J., As he then was) entered on the 9th day of November, 2016, and
3. Leave to appeal to the Court of Appeal subject to granting of the first two prayers and any other reliefs the Court would seem just to grant.

Upon hearing the matter, the court did not hesitate to grant the applicant's application to the effect that; **One**, the applicant had to file Notice of Appeal out of time within thirty (30) days from the date of ruling (08/11/2018), and **Two**, the applicant had to file an application for leave to appeal to the Court of Appeal within fourteen (14) days from the date the ruling was delivered. However, the applicant did not utilize such an opportunity as alluded to above, hence instant application.

When the instant application was called on for hearing, parties agreed to dispose the matter by way of written submissions. Ms. Josephine Boniphace, learned advocate entered appearance for the respondent, whereas the applicant appeared in person, unrepresented.

The applicant submitted at lengthy referring to what he stated in his affidavit sworn by him. He submitted that a journey began vide a case registered as **Land Appeal No. 99 of 2014**, filed at the High Court of

Tanzania (supra) wherein the applicant was the respondent whose judgment was delivered in favour of the respondent on 28th April, 2016. Upon being aggrieved by such decision the applicant filed an application No. 324 of 2016 seeking leave to appeal to the Court of Appeal of Tanzania. As this application was erroneously filed before the court, was struck out on the ground that the applicant filed one by way of second bite to before the Court of Appeal. He further filed **Misc. Application No. 988 of 2017** seeking for an extension of time within which to file a Notice of Appeal against the ruling and order of this Court which was delivered by my brother Hon. Ndika, J., (As he then was) on 9th November, 2016 of which the same was granted by this Court on the 8th November, 2018 before Hon. De Mello, J., (As she then was). He was given an extension of thirty (30) days to properly exercise his right. To comply with the order of the Court, he filed **Misc. Land Case Application No. 815 of 2018**, but again it was struck out by this Court (Kakolaki, J.) with the leave to refile due to wrong citation of the law. That was on the 20th December, 2020.

In a bid to pursue his right, he refiled his application seeking for leave to appeal to the Court of Appeal of Tanzania before this Court where the matter was registered and marked **Misc. Land Application No. 731 of 2019**. Since it was an omnibus application, it was struck out, hence instant application.

On the basis of the above explanations, the applicant submitted that the reasons for delay were actually beyond his control. He highlighted that though he kept promptly applying for extension of time, lodging the relevant notices and leave to appeal within time, but all actions were made either using a wrong move or sometimes he knocked the wrong

platforms while having good faith and clean intention to pursue his right to appeal. He therefore, asked this Court to invoke the provisions of the law under sections 93 and 95 of the Civil Procedure Code [Cap. 33 R.E. 2021] (the CPC) to enlarge the extended time. He further emphasized that under section 93 of the CPC the Court is empowered from time to time, to enlarge such period even though the period originally fixed or granted may have expired. To bolster his argument, he cited the case of **Steven Ngolola (Legal Representative of Charles Ngolola) v. Posian Mkwama**, Misc. Land Appl. No. 08 of 2019 which set the parameters for exercising discretionary powers of the Court enshrined under section 93 of the CPC.

On her part, the respondent through Ms. Josephine Boniphace, learned advocate referred to the respondent's counter affidavit and bitterly opposed to what the applicant submitted. In her reply to the applicant's written submission in chief, the learned advocate averred that the applicant filed about five (5) applications, but all found without merits. As regards to instant application, the learned advocate submitted that upon passing through the applicant's application could not find any sufficient reasons to convince this court to grant the orders sought. She added that Hon. Ndika, J., (As he then was) viewed that the proposed grounds of appeal didn't suggest if there was an arguable appeal. Moreover, there is no issue(s) or a question of general importance to be considered by the Supreme Court of our Land because what have been alleged by the applicant, already have been dealt by this Court vide **Land Appeal No. 99 of 2014**. In her view, this application is baseless and hopeless in the eyes of the law.

She contended that the applicant has been filing endless applications based on the same cause due to his failure to take proper care over the matters he filed before this Court. She underscored that the applicant was duty bound to account for each and every day so delayed as per the decision of **R. v. Yona Kaponda and 9 Others [1985] TLR, 84**. She further cited the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015, CAT Arusha and **Mbogo & Another v. Shah** (1968) EA 93 to cement her submission that the applicant has not attained the legal requirements of showing good cause for delay. His ignorance of the law cannot be used as shield to justify reasons for delay.

I have impassively considered the application, the rival submissions of and the relevant provisions of law and cases cited by both parties in their respective written submissions. Before dealing with the substance of this application, I find it apposite to refer to the provisions of the law cited by the applicant. Under sections 93 and 95 of the CPC, the law provides that:

"Section 93 - Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired." [Emphasis supplied].

Under section 95, the law says that:

"Section 95 - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make

such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” [Emphasis supplied].

From the above provisions of the law, the major issue for consideration is whether or not the applicant has shown good cause to warrant this court enlarge time within which to exercise the remedy granted to him by this Court (De Mello, J., As she then was).

In principle, I incline to agree with the learned advocate for the respondent that, it is a trite principle of law that extension of time is the discretionary powers of the Court and the same has been re-emphasised to be exercised judiciously. On the other hand, the duty of the applicant is to disclose sufficient reasons for each delay. The best reason is that the applicant should not be counted as the source of delay. In addition, the court in exercising its discretionary powers, must take into consideration all relevant factors, including the need to arrive to a final and conclusive verdict of the controversy by the superior court.

In this application, it is the duty of the applicant to disclose sufficient reasons for each delay and should not be mottled as the source of delay. As the records tells, the applicant has demonstrated and exhibited via his affidavit the reasons for delay in paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 respectively. In my opinion, these are sufficient cause to persuade this Court exercise its discretion to enlarge the such a period sought by the applicant even though the period which was originally fixed or granted by this Court already had been expired. The way I construe this application is that, the same has been filed to revive the extension of time which was granted by the court within which he failed to exercise his remedy within the prescribed time. I agree that the

principles laid down in the case of **Steven Ngolola** (Legal Representative of Charles Ngolola) v. **Posian Mkwama** (Supra) is useful in the circumstance of this case as it establishes the determinant factors and set the parameters for exercising discretion of the court cherished under section 93 of the CPC.

In my view, the most important thing to be considered by the court is the merits of the application, the reasons advanced by the applicant explaining why he failed to encounter the limitation period given for taking the necessary action so required. The so-called good cause may also be established if the applicant will be able to show that such an application for extension of time was or has been brought promptly and that in so doing, he acted diligently.

Now the question that arises from the above observations is, has the applicant managed to advance sufficient reasons why he failed to meet the limitation period given to him and whether the applicant has been taking reasonable steps to pursue his case. It was Ms. Josephine's contention that the applicant's ignorance of the legal procedures to move properly the court it has never been featured as good cause for extension of time for leave to appeal out of time. She further submitted that the applicant has not been acting diligently to exercise all the opportunities that have been given to him, and therefore has nothing to offer as an excuse for sloppiness.

With due respect to the learned advocate, the applicant has at least demonstrated and exhibited good cause by explaining the reasons why he delayed to file such applications and all the time had been promptly filing the aforementioned applications for extension of time and acted

diligently. In my considered opinion, suffice to say that non-stop endeavours to access what the applicant believes to be his rights, portrays his diligence. I have in mind that the applicant is a layperson who had been trying and attempting to file his applications, but in vain. And still is having the same spirit and clean intention to exercise his right to appeal. If the applicant will not be granted enlargement of time as prayed, it will be like a clawback fix which would not be compatible to substantive justice as stipulated by the law under section 3A (1) and (2) of the Civil Procedure Code [Cap. 33 R.E. 2019].

Before pen off, I further had an opportunity to read the decision in the case of **Elibariki Asseri Nnko v. Shifaya Mushi & Lewanga Kinando**, (1998) TLR, 81 in line with the provisions of the law under Section 21 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019] as it was cited in the case between the applicant and respondent in Misc. Land Application No. 988 of 2017. Frankly speaking, the applicant is entitled to be granted with the prayers sought for one reason that he has managed to exhibit the reasons for delay.

From the foregoing observations, and upon considering the nature and circumstance of the matter at hand, I am satisfied that the applicant has managed to establish sufficient cause to warrant me exercise my discretion to enlarge time on the strength of sections 93 and 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]. In the result, I thus hereby order and direct that:

- (1) The applicant to file Notice of Appeal Out of time within thirty (30) days from the day of this Ruling.

(2) The applicant to file Application for Leave to Appeal to the Court of Appeal of Tanzania within fourteen (14) days from the date of this Ruling.

(3) Each party to bear its own costs.

Order accordingly.

DATED at MOROGORO this 29th day of November, 2021.


M. J. CHABA

JUDGE

29/11/2021

This ruling delivered at my hand and Seal of the Court at Morogoro this 29th day of November, 2021 in Chamber's in the presence of both the Applicant and Respondent who appeared in persons, unrepresented.


M. J. CHABA

JUDGE

29/11/2021.

Rights of Appeal to the parties fully explained.




M. J. CHABA

JUDGE

29/11/2021.