

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**LAND APPEAL NO. 28 OF 2021**

*(C/f Misc. Application No. 64 of 2016 District Land and Housing Tribunal of Moshi)*

**MARIA GODWIN MAWA ..... APPELLANT**

**VERSUS**

**BAKARI MAWA ..... RESPONDENT**

**JUDGEMENT**

***24<sup>th</sup> February & 31<sup>st</sup> March 2022***

**MWENEMPAZI, J.**

This appeal originates from District Land and Housing Tribunal of Moshi (the trial tribunal) in Misc. Application No. 64 of 2016 whereby on 15<sup>th</sup> September, 2016, Chairman of the tribunal Hon. G. Kagaruki dismissed it for being time barred.

Initially, the appellant filed Application No. 56 of 2015 at the trial tribunal against the respondent over rent arrears in respect of 15 acres piece of land located at Uchira Kati within Moshi District in Kilimanjaro Region



(hereinafter will be referred to as the suit land). However, the application was dismissed for want of prosecution. The appellant then filed Misc. Application No. 64 of 2016 praying for an order of the court setting aside the dismissal order and restore the main application so that the same can be heard on merit. The respondent raised a number of preliminary objections; one of them being that the application was time barred. The trial chairman sustained it and dismissed the application. Hence, the current appeal with only one ground of appeal;

1. That, the learned chairman of the Tribunal erred in law in dismissing Misc. Application No. 64 of 2016 for being time barred on the ground that, Application for extension of time to set aside dismissal orders fall under Item 21 Part III of the Schedule of the Law of Limitation Act, Cap 89 R.E. 2019, thus, should be filled within 60 days after the lapse of 30 days allowed to set aside dismissal order.

This appeal was heard by way of written submission, the appellant was represented by Mr. Mnyiwala Mapembe, learned advocate while the respondent appeared in person and unrepresented.

Supporting the appeal, Mr. Mapembe submitted that, there is no time limitation within which application for extension of time should be preferred in Court. He added, Item 21, Part III of the Law of Limitation



Act which requires applications which have not been prescribed by the law to be filled within 60 days, does not apply in applications for extension of time. Hence, the tribunal committed fatal legal error in deciding the opposite, that the application of extension of time was time barred. Cementing on this argument, learned advocate cited the cases of **Tanzania Rent a Car Limited Vs. Peter Kimuhu, Civil Application No. 226/01 of 2017** (unreported) and **Dimension Data Solution Limited Vs. WIA Group Limited and 2 Others, Civil Application No. 218 of 2016** (unreported). In both cases Court of Appeal observed that, there is no specific time limit set in filling application for extension of time because doing so would have effect of fettering discretion of the court in such applications.

He therefore prayed that this appeal be allowed with cost and the appellant be heard on merits.

Contesting the appeal, the respondent submitted that, the trial tribunal chairman did not error in dismissing the application since the same was filed out of 90 days prescribed under Item 21 Part III of the Law of Limitation Act. To support his argument, he cited the case of **M/S Sopa Management Ltd Vs. M/S Tanzania Revenue Authority, Civil Appeal No. 25 of 2010** (unreported) where the Court of Appeal





observed that, lodging applications for Bill of Cost should fall under item 21 to the first Schedule Part III of the Law of Limitation Act since there is no law providing for the same under the Act.

He argued, since the above decision is from the Highest Court in Tanzania, the same is binding to subordinate courts and applicable to all applications including those for extension of time save for those specifically exempted by law. He prayed that the appeal be dismissed with cost for want of merit.

I have given a deserving weight to the both parties' submissions and come up with only one issue for determination that is;

***"Whether the application for extension of time was time barred"***

The law is clear and the Court of Appeal decisions are at one that when it comes to application for extension of time, the discretion is vested entirely upon the court to grant or not. This discretionary power, however, is judicial in nature and must be confined to the rules of reason and justice. It also has to be judicial and not according to private opinion or arbitrarily. The case of **Eliakim Swai and Another Vs. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 (CAT) At Arusha (unreported) set a principle in determining good cause for granting extension of time, among others, the applicant must account for all the period of the delay; and 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. The same position was also observed in the case of **Daudi Haga Vs. Jenita Abdon Machafu**, Civil Reference No. 1 Of 2000 and **Lyamuya Construction Co. Ltd Vs. Registered Trustees of YWCA of Tanzania**, Civil Application No. 2 of 2010.

A close look at the line of argument in parties' submissions vividly shows that, they share a common feature on the fact that Law of Limitation Act does not set time limit within which an application for extension of time should be made. As pointed out shortly, the Courts are vested with such discretion whether or not grant extension of time in applications before it. In reaching its decision whether or not the application was time barred the trial tribunal held that;

*"Since there is no specific provision for time limit to file this application, it is obvious that the same fall under item 21 part III of the law of Limitation Act (Cap 98 R.E 2002). I therefore concede to the submission by the counsel for respondent on this point of objection that the applicant ought to have filed this application within 60 days after the expiry of 30 days*



*provided for filing an application for setting aside the dismissal order"*

Item 21 of Part III to the Schedule of the Law of Limitation Act provides for sixty days as time limitation for all applications under the Civil Procedure Code, the Magistrates' Courts Act or other written laws for which no period of limitation is provided in the Act.

When determining the preliminary objection, the honourable Chairperson of the District Land and Housing Tribunal was of the view that an application for extension of time, like any other application for which no specific time for instituting the same is provided by any other law, should be filed or lodged within sixty days from the date of the decision.

In determining this appeal therefore, the critical question to be considered is whether the sixty days rule conveniently applies in all circumstances and applications. Facing the same scenario, the Court of Appeal in the case of **Tanzania Rent A Car Limited (supra)** exhaustively deliberated on the matter and came up with the following findings;

*"The legal position set in the case of **Bank of Tanzania vs. Said A. Marinda**, in very clear terms, implies that an application for extension of time must be filed within sixty days from the date of the decision and a person who is late in doing so is obliged to file two applications for extension of*





*time. The first one will be in respect of the days exceeding the sixty days in which he or she will have to account why he or she is late in filing the application for extension of time within sixty days. In this case he will have to account for the days exceeding sixty days only. If granted, the applicant will then proceed to file another application for extension of time in which he or she will have to account for the delay in filing the application for extension of time within the first sixty days from the date of the decision, order, or judgment. This, in my view, justifies Mr. Shayo's concern that it will cause a multiplicity of applications."*

The Court went on stating;

*"Given the above long standing and firmly established legal principles applicable in considering applications for extension of time, it is my strong view that a person applying for extension of time is required to file only one application for extension of time and in it he or she will have to account for each day of delay for the whole period of time he or she has been late.*

....



*In the circumstances, I am increasingly of the firm view that there is no specific time limit set within which an application for extension of time should be filed. This is not only in accordance with the long-established practice built on Court's landmark decisions but also accords to logic that so as to expedite dispensation of justice there is need to avoid, whenever possible as is the case herein, multiplicity of applications."*

I fully subscribe to the above position that the sixty days rule should apply in filing of all other applications for which no time limit is prescribed except in applications for extension of time.

That being said, I therefore allow the appeal, set aside ruling of the District Land and Housing Tribunal of Moshi in Misc. Application No. 64 of 2016 and order the application of extension of time to set aside the dismissal order proceed to be heard on merits. Due to the nature of this appeal, I give no order as to cost.

It is so ordered.

Dated and delivered this 31<sup>st</sup> Day of March, 2022



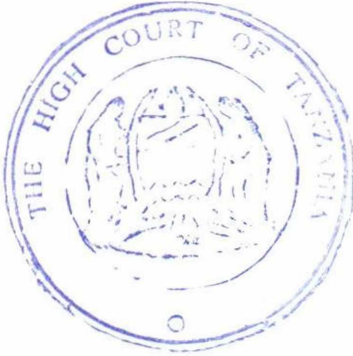
**T. M. MWENEMPAZI**

**JUDGE**

**31/03/2022**



Ruling delivered in Court this 31<sup>st</sup> day of March, 2022 in the presence of Ms. Zuhura Twalibu, Advocate for the applicant and Mr. Bakari Mawa, the Respondent who was unrepresented.



*T. M. Mwenempazi*  
**T. M. MWENEMPAZI**  
**JUDGE**  
**31/03/2022**