

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[LABOUR DIVISION – ARUSHA SUB REGISTRY]**

AT ARUSHA

MISC. LAND APPLICATION NO. 31 OF 2021

(Originating from the Ruling of the District Land and Housing Tribunal of Babati in Manyara Region in Misc. Application No. 185 of 2016)

MARCO GISHINDA.....APPLICANT

VERSUS

MUGHANJA GABA.....RESPONDENT

RULING

10th May & 15th June, 2022

TIGANGA, J.

Under Section 14(1) of the law of Limitation Act. [Cap 89 R.E 2019] and the proviso to section 38(1) of the Land Disputes counts Act [Cap 216 RE. 2019], the applicant moved this court to extend time within which to lodge his appeal out of time.

The application was preferred by chamber summons, which was supported by an affidavit sworn and filed by the applicant himself. In the affidavit, a brief background of the application has been deposed as well as the reasons for the application.

The facts in support of the application are as follows; the applicant was the second respondent in Misc. Application No. 185 of 2016 before the District Land and Housing Tribunal for Babati, which was decided on

19/03/2020 in the absence of the applicant and his Advocate. The reason for that absence is that, the Advocate had no notice that the ruling would be delivered on that date.

The applicant's Advocate became aware that the ruling was delivered some days later that is on 30th March, 2020, he wrote a letter to the District Land and Housing Tribunal requesting to be supplied the copy of the ruling but there was no typed copy at that material time. Soon thereafter the Chairman was suspended from his office thus making it impossible for the typed copy to be endorsed by him.

According to the learned counsel, for the applicant, he was supplied with the said copy on 27th April 2021, when he became aware that the copy was typed and signed some months ago. He paid for the same before he was supplied therefore he relied on the exchequer receipt to prove that he was supplied on that date.

On a bid to substantiate as to why he was to wait for a copy before filing the appeal he said, under normal circumstances the ruling in application are not appealable as they do not make final determination of the matter, but the ruling in Misc. Application No. 185 of 2016 has made the final determination of the mater hence necessitating the appeal.

The application was opposed by the respondent who filed the counter affidavit. In such counter affidavit, the respondent expressed the confusion he was into, because the affidavit he was served by the applicant, shows that it was sworn by one Simon Tlatlaa Emay but was endorsed by the applicant. However, he said even with this irregularity, he still was able to argue the same on merits.

Arguing against the merits of the affidavit, he deposed that the ruling was delivered with knowledge of the applicant, because it was delivered in the presence of one Advocate Jackson Kisaka who was holding brief for Advocate Ami who is on record to have been representing the applicant. Basing on that fact therefore, it was not true that the Advocate had no knowledge of the ruling. According to him, that is signified by the record of the case.

Further opposing the application, he said, the copy of the ruling was extracted and was certified on 09th June 2020 by the Chairperson, therefore from that date, it was ready for collection. That means failure to collect the same is lack of diligence

In reply to the counter affidavit, the applicant deposed that, Jackson Kisaka was never instructed by his Advocate to hold brief as he is a State Attorney working with National Prosecution Service Manyara. He is not

the practicing Advocate with a practicing certificate. If he volunteered to do so then, he was supposed to inform his Advocate what transpired in the tribunal on 19th March, 2020 which he did not do.

Also that, if the Advocate did not know what transpired before the tribunal on 19th March, 2020, he wouldn't have known anything about the delivering of the ruling on 19th March, 2020 and would equally not have known that on 09th June 2020 the copy was certified, ready for collection.

With leave of the court parties argued the application by way of written submission. In the submission in chief filed by Mr. Patrick Ami, learned counsel for the applicant, he submitted reiterating the contents of the two documents, the affidavit and reply to the counter affidavit filed in support of the application. He insisted that the ruling was delivered in his absence and he did not instruct the said Jackson Kisaka to hold his brief on the date when the ruling was delivered. He said further said that Jackson Kisaka is a State Attorney working in the National Prosecution Services Office at Babati as the Public Prosecutor who possess no practicing certificate.

He said after he was doubtful that probably the Ruling might have been delivered in his absence he went to the District Land and Housing Tribunal, only to be told that it was delivered on 19th March, 2020. He

said, had he been aware he would not have waited for almost two weeks to apply for a copy of a copy of the ruling.

In his understanding, the copy was not typed immediately after the delivery of the ruling, it was only on 27/04/2021 when he visited the registry of the tribunal when he became aware that, the ruling was ready for collection and that all that time he was not informed that the ruling was ready for collection. In the end he prayed to be afforded opportunity to file the appeal out of time as he has adduced reasons to waranthim extension of time.

In the reply submission made in opposition of the application, the counsel for the respondent Mr. Raymond Joachim Kim, Advocate, submitted that, the application at hand is useless, and requested the same to be dismissed.

He submitted that looking at the grounds and the arguments in support of the application, it can be concluded that, the applicant delayed due to lack of diligence, something which cannot be a justification for delay.

He submitted further that, the matter originated from the Ward Tribunal, as Land Dispute No. 36/2010 before the Getanu Ward Tribunal, there is no legal requirement for attaching the copy of ruling. Therefore,

when it came to the knowledge that the ruling had already been delivered then, he had good time, to file the appeal within time. To the contrary it seems he was not serious with the matter and has not been acting diligently, therefore the application and the intention to appeal is nothing but an afterthought. On that basis he prayed for the application to be dismissed with costs.

On that, he invited the court to consider the principal in the case of **Damas Jonyo vs Mussa Samson Ogonyi**, Misc. Land Application No. 23/2021 – High Court Musoma where Hon. Mahimbali, J. held *inter alia* that;

"Going through the provision of the Land Disputes Courts Act [Cap 216 RE 2019], I have found none of the provision which requires the position of appeal to be accompanied by a copy of Judgment or order of the Ward Tribunal. Hence assertions that the appellant was supplied with Necessary documents late, to my view have no legal basis."

He further submitted that the applicant did not speak the truth when he said he was not aware of the ruling while he sent some one to hold brief for him, the fact is that according to him, he sent Mr. Jackson Kisaka on that particular date to hold brief for him.

He said by way of proof that Jackson Kisaka is an Advocate with Role No. 6481 and that he is the practicing Advocate up to when the submissions referred were made. He submitted that in law, the assertion which contain lies cannot be relied upon. To support his argument, he invited the court to rely on the principle in the case of **Makunja John vs. Nyamagere Paulo**, Land Appeal No. 45 of 2021, High Court of Musoma, Mahimbali, J. who held to that affect.

Last but not least, the court was reminded of the principle that in the application of this nature the applicant must as a matter of law account all days of delay. Buttressing the principle, he cited the case of **Dalmas Jonyo vs. Mussa Sambo Ogonyi** (supra). He in the end asked for the application to be refused for being unmeritorious.

In the rejoinder Mr. Ami, learned counsel for the applicant submitted that, he was diligent in filing the application at hand because he received the copy of the ruling on 27th April 2021, and filed this application on 30th April 2021, therefore within 3 days he had already filed this application.

He submitted further that, the copy of ruling cannot be dispensed with, when filing the appeal or application for extension of time for matters originating in Ward Tribunal. He submitted that the

decision relied upon are of the High Court which is not binding to this Court, it is persuasive.

He said regarding to the issue as to whether Jackson Kisaka had instruction to hold brief, he submitted that, that is not true because the said Jackson Kisaka would have immediately informed him what transpired before the Tribunal had he had such instruction.

He submitted further that the Chairperson was really suspended as alleged and that the chairman from Arusha was visiting Babati District Land and Housing Tribunal during the suspension.

He asked the court to believe that he exercised enough diligence that is why he managed to file the application within three days from the date he received a copy of the ruling which is sought to be challenged before the High Court. In the end, he asked the application to be allowed.

That presents the historical background and the ground in support and against the application.

From that background, and the application it self, it can be gathered that, the application at hand seeks for this court to extend time for the applicant to appeal against the ruling of the District Land and Housing Tribunal of Babati in Misc. Land Application No. 185/2016. The application is made under **section 14 (1) of the Law of Limitations Act (Supra)** and the

proviso to **section 38 (1)** of the Land Disputes Courts Act (Supra). Of these two provisions, **section 38 (1)** is a specific provision which empowers this court, upon good cause shown by the applicant to extend time for filing an appeal either before or after such period of sixty days has expired.

Under subsection (1) of the said section 38, the person aggrieved by the decision of the District Land and Housing Tribunal in proceedings originating from the Ward Tribunal, may appeal to the High Court within 60 days **from the date of the decision or order**. It should also be noted that, every appeal of this nature under section 38 (2) (3) must be lodged to the DLHT, which will within 14 days prepare the record and dispatch the petition together with the record to the High Court.

Reading between lines all the subsections, of section 38 of the Land Disputes Courts Act (supra) it does not at all suggest that a person so aggrieved needs to attach the petition of appeal with decision sought to be challenged.

The logic and reason as to why the attachment of the copy of the decision is not necessary is not far to fetch. It is because, once the petition is filed to the District Land and Housing Tribunal, the tribunal prepares

the record which includes the decision appealed against, sent the same to the High Court together with the petition.

That being the case, the petition is sent to the High Court together with the copy of the decision sought to be challenged. That said, I find myself persuaded by the decision of my brother Mahimbali, J, in the case of **Dalmas Jonyo vs. Mussa Samson Ogonji (Supra)** that it was not necessary for the applicant to wait for a copy for him to file an appeal and the appeal at hand inferring to the provision of section 38(1) is not served by section 19 of the Law of Limitation Act.

That said, I find the defence raised by the counsel for the applicant that he delayed because he was waiting for a copy of ruling to have no merit, and does not constitute good cause to warrant extension of time.

If should also be noted that under section 38 (1) of the Land Disputes Courts Act (Supra), the High Court may extend time only when there is **good cause shown**. The term good cause has not been defined by the statutes, that is section 14 of the Law of Limitation Act (Supra) and section 38 of the Land Disputes Court's Act (Supra). However, a Plethora of case laws have defined what it is. One of the famous case in which the term was defined is the case of **Lyamuya Construction Company Limited vs The Board of Registered Trustees of Young Women's**

Christian Association of Tanzania, Civil Application o. 2/2010 CAT
(Unreported)

- i. The applicant must account for all the days or period of delay,
- ii. The delay should not be inordinate,
- iii. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take,
- iv. If the court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance such as illegality points of law Illegality of the decision sought to be challenged.

On the length of delay, the impugned ruling was delivered on 19th March 2020, it was certified ready for collection on 09th June 2020, but the application was filed on 05/05/2021 a period which is almost eleven Months from when the document was ready for collection.

In the effort to explain away the delay, or to account the period delayed the counsel submitted the receipt showing that, he paid for a copy and collected the same on 27/4/2021. It was about ten months and 19 days from when the copy was certified and ready for collection. He said during this time he was not aware that the copy was ready for collection. Despite the fact that, on 30th March 2020 he wrote a letter asking for a copy of

the said ruling he said nothing as to whether he made followup and was denied the said copy.

From the record and the submissions, made in support of the application it seems, after writing such a letter of request, the applicant and his counsel did not make any follow up. Even though the counsel alleges that he had been making follow up, he produced no evidence to show that he was making follow up.

There is no reminder letter, or even fact on how many times within ten months he visited the tribunal's registry and how he was being told. In the premises, logic dictates that had he made follow ups, he would have found the copy laying waiting to be collected, and would have collected it soon it was certified.

It is expected of a person who is a party to the case to make follow up of the copy of the ruling or Judgment. Even in the advanced systems like ours (Judiciary of Tanzania) where these documents are supplied free of charge and served through the parties address via a system commonly known as "Pasta Mlangoni" or email, still a party has the duty remind the court as part of his follow up and showing diligence, where he has not received the said copy.

Failure to make follow up or remind of the request entitles the court to make adverse inference that, the said party was not diligent.

Like wise, the applicant in the present application in the circumstances where a copy of ruling was laying in the Disrtic Land and Housing Tribunal's registry without being collected for more than ten months, cannot escape the blame that he was not diligent.

Further to that, even the affidavit filed in support of the application does not disclose any illegality of the decision sought to be challenged and so are the arguments advanced in support of the application. Lastly, the ten months and 19 days which the applicant delayed is not an inordinate delay, the period has not been accounted for, thus making the application at hand to have no good cause for extension of time.

That said, the application is refused and stands dismissed for the applicant's failure to show good cause for his delay.

It is accordingly ordered.

DATED at **ARUSHA**, this 15th day of June, 2022.



A handwritten signature in black ink, appearing to read "J. C. Tiganga", is written over the printed name.

J. C. TIGANGA

JUDGE