

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. LAND APPLICATION NO. 71 OF 2021

(Originating from the District Land and Housing Tribunal for Mbeya, at Mbeya,
in Application No. 117 of 2019)

BERNARD WILLIAM.....APPLICANT

VERSUS

1. NICKOLAUS MYEFU
2. PILI DAIMON MWAKAILA
3. GODLOVE MBWANJI
4. EDWARD MDOE

.....**RESPONDENTS**

RULING

Date of Last Order: 13.05.2022

Date of Ruling: 03.06.2022

Ebrahim, J.

The applicant, BERNARD WILLIAM has filed an instant application under **sections 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019** praying for extension of time to appeal against the decision of the District Land and Housing Tribunal for Mbeya at Mbeya in Land Application No. 117 of 2019 which was delivered on 18/11/2020.

The application was supported by an affidavit sworn by Tunsume Angumbwike, counsel for the applicant. The 2nd, 3rd and 4th respondents (collectively to be referred as the respondents)

objected the application by filing a counter affidavit sworn by Joyce M. Kasebwa, advocate.

Facts raising to the present application can be briefly narrated as follows: The applicant sued the respondents in the DLHT for invading his land located at Shamweengo village, Inyala Ward in Mbeya Rural District. The DLHT decided in favour of the respondents. Felt discontented, the applicant applied for copies of judgment and proceedings so as to appeal against the decision. When he was availed with the requested copies, he thought was late. He lodged an application for extension of time vide Misc. Land Application No. 15 of 2021. The same was however struck out on 10/08/2021. Hence the present application.

At the hearing, the applicant was represented by Ms. Tunsume Angumbwike, learned advocate while the respondents enjoyed the service of Mrs. Joyce Kasebwa, learned advocate. The application was argued by way of written submissions.

In support of the application, Ms. Angumbwike's submission based on the fact that the delay was not intentional since the applicant was delayed to be supplied with the copies of judgment and proceedings. She contended that the applicant

being aggrieved by the decision of the DLHT, applied for copies of judgment and proceedings which were supplied to him belatedly, on 9/03/2021.

Ms. Angumbwike contended further that when the applicant found himself late, he lodged an application for extension of time. That the same was struck out on 10/08/2021 for upholding a preliminary objection which was raised by the respondents' counsel. According to her, the applicant acted diligently in pursuing his right to appeal but it was the delay in supplying the copies of judgment and proceeding which caused him fail to appeal timely. Ms. Angumbwike relied on the case of **Indo-African Estate Ltd v. District Commissioner for Lindi District and Others**, Civil Application No. 12/07 of 2022 CAT at Mtwara (unreported) where it was decided that the applicant cannot be penalized for the mistake beyond his control.

Moreover, Ms. Angumbwike argued that since it is the requirement of **Order XXXIX Rule 1(i) of the Civil Procedure Code, Cap. 33 R.E 2019** (CPC) that appeal to this Court must be accompanied with the copies of judgment and decree appealed from, it was impossible for him to file the appeal without

attaching them. She supported her stance with the case of **Peace Rushongo v. Ruth Yosia Bulangwahe**, Misc. Land Application No. 16 of 2019 HCT at Bukoba (unreported).

Ms. Angumbwike contended also that the decision by the DLHT is full of illegalities which needs the intervention of this Court through appeal. She relied on the decision in the case of **Kashinde Machibya v. Hafidhi Said**, Civil application No. 48 of 2009 CAT at Dar es Salaam (unreported) where it was stated that illegality constitutes sufficient reasons for extension of time. Ms. Angumbwike referred the illegality committed by the DLHT to be the error to enter judgment in favour of the respondents relying on the letter which was rejected and withdrawn during trial. She therefore, prayed for this court to grant the application.

In reply, Mrs. Kasebwa submitted that the applicant has failed to account for each day of delay as per the requirement of the law. She contended that the applicant did not state what he was doing from 10/08/2021 when the previous application was struck out to 2/09/2021 when the present application was filed. To support her contention, Mrs. Kasebwa cited the case of **Fraconia**

Investments Ltd v. TIB Development Bank Ltd, Civil Application No. 270 of 2020 CAT at Dar es Salaam (unreported).

More-so, Mrs. Kasebwa contested the applicant's reason that there are full of illegalities in the DLHT's decisions. She contended that the applicant did not state the said illegalities in his affidavit which is contrary to the observation by the CAT in the case of **Zuberi Nassor Moh'd v. Mkurugenzi Mkuu Shirika la Bandari Zanzibar**, Civil Application No. 93/15 of 2018 CAT at Zanzibar (unreported) where it was observed that the applicant is required to explain the illegalities so as the court can be in position to see them without searching them which may lead the court to the risk of going into the merits of the case.

Mrs. Kasebwa argued further that the illegality mentioned by the applicant's counsel in her submissions is baseless since the same did not feature in the affidavit. According to her, reasons for extension of time are supposed to be given in the affidavit not in the submissions because submissions are not evidence. She supported her argument with the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government and others**, Civil Appeal No. 147 of 2006 CAT

at Dar es Salaam (unreported). She thus, prayed for this court to dismiss the application with costs.

In her rejoinder submissions, Ms. Angumbwike reiterated what she averred in her submissions in chief. She insisted that the applicant was not negligent since he delayed to be supplied with the copies of judgment and proceedings. She also contended that the issue of illegality was raised in the affidavit. She stated that the cases cited by the respondents' counsel are distinguishable. She reiterated her prayers.

It is a trite law that where extension of time is sought, the applicant must demonstrate sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur; as held in the case of **Finca (T) Limited & Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa (unreported). Therefore, the issue to be determined by this court is whether or not applicant has sufficient reasons for this court to grant the application.

Before considering the issue posed above, I should state from the outset that the days spent in seeking and obtaining the copies of the decree or orders appealed against is not one of good reasons for extension of time. This is because, the time spent is automatically excluded in computing the time limitation required in appeal. This is according to **section 19 (2) of the Law of Limitation Act, Cap. 89 R:E 2019.**

This is also in accordance with the law underlined by the CAT in the cases of **The Director of Public Prosecutions (DPP) v. Mawazo Saliboko @ Shagi and Others**, (Criminal Appeal No. 384 of 2017) [2020] TZCA 199; (06 May 2020) tanzlii.org.tz. and **Samuel Emmanuel Fulgence v. Republic**, (Criminal Appeal No. 4 of 2018) [2019] TZCA 380; (08 November 2019) tanzlii.org.tz. In these two cases, the CAT interpreted the provisions of **section 361 (1) (b) of the Criminal Procedures Act, Cap. 20 R: E 2019.** The proviso to such provisions of the law guides that, in computing the period of 45 days prescribed by the law for appealing, the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

In my view, though the principle underlined in the above cited two precedents of the CAT related to criminal appeals, it applies mutatis mutandis in civil matters. This is because, the proviso to section 361 highlighted above carries a similar spirit to that embodied under section 19 (2) of Cap. 89.

It is thus, my settled opinion that the applicant's reason that it took 113 days for the DLHT to avail him with the copies of judgment and proceedings has no legal basis.

In the circumstance, considering the affidavit in support of the application and the submissions by Ms. Angumbwike the remaining reasons is the striking out of the previous application, and the illegalities of the decision intended to be appealed against.

I am alive of the guidance by the CAT in the cases of **Finca (T) Limited & Another v. Boniface Mwalukisa**, (supra) and the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) that the applicant must account for all the period of delay.

I am also alive of the principle that even a single day of delay must be accounted for; see **Airtel Tanzania Limited v. Minister Light Electrical Installation Co. Ltd and Another**, Civil Application No. 37/01 of 2020 and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (both unreported)

In the instant application, according to the affidavit in support of the application, the previous application was struck out on 10/8/2021. The application at hand was lodged in court on 2/9/2021. As correctly argued by Mrs. Kasebwa, from the date of string out to the date of filing the present application there is a lapse of 22 days. However, the applicant did not give any account to these 22 days. Ms. Angumbwike in her rejoinder submission stated in a single sentence, which for easy reference I quote, that:

"Even for the delay of twenty-two days after the first application struck out by this court is not negligently done as the applicant filed the second application after being supplies (sic) with the typed ruling as the date of ruling of 10/08/2021 the copies were not ready for collection as the ruling was not yet typed and signed by the presiding judge"

It is my humble views that, this statement would have been valid if it has been stated in the affidavit. It is further my views that

the applicant would have added when the said copy of ruling was availed to him and state the days he and his counsel spent in preparing the application. I took this view basing on the stance of the law that reasons for extension of time are supposed to be given in the supporting affidavit. Lack of which the statements are mere words from the bar. This was underscored in the case of **Farida F. Mbarak and Another v. Domina Kagaruki and 4 Others**, Civil Reference No. 14 of 2019 (unreported), see also the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government and others**, (*supra*).

That being the case, since the applicant did not account for 22 days which lapsed after the previous application being struck out on 10/8/2021; his reason that he was delayed due to the struck out of the first application has no merit.

Another reason for extension of time given by the applicant is illegality. I am aware of the law that where a point at issue is illegality, the same constitutes a sufficient reason for extending time so that the illegality can be cured; see the case of **Harrison Mandali & Others v. Registered Trustees of the Archdiocese of Dar es Salaam**, Civil Appl. No. 482/17 of 2017 (unreported).

Nevertheless, for easy reference, I wish to quote paragraph 10 of the affidavit supporting the application in which the applicant raised the reason of illegality. It is stated that:

"That, the appeal has great chances of success since the decision sought to be challenged is full of illegalities. Hence, it is for the interest of Justice this Honourable Court to grant the prayers set forth in the chamber application and if this application shall not be granted will fatally occasion a miscarriage of justice."

Despite the fact that I found the statements which are not stated in the affidavit are mere statements from the bar; I also find it apt to re-account what Ms. Angumbwike averred in her submissions regarding the claimed illegality. At page 4 of the written submissions, she stated that:

".....in the proceedings and judgment of the Mbeya District Land and Housing Tribunal No. 117 of 2019 there are many illegalities include; **error of the trial tribunal to enter judgment in favour of the 3rd and 4th respondents relying on the letter which was rejected and withdrawn during trial in contravention of the law.** The withdrawn of the said letter was shown in page 26 of the proceedings and the reliance was shown in page 8 of the typed judgment."

Looking at the above two quotations, I am constrained to agree with Mrs. Kasebwa that the applicant gave a general statement in his affidavit that the decision of the DLHT is full of

illegalities without explaining it. I am also constrained to find out that the averment made by counsel for the applicant is not the illegality worth granting this application. This is because, it has been enunciated now and then by the CAT and this court that a point of illegality worth granting extension of time must be apparent on the face of the record such as the question of jurisdiction; and not one that would be discovered by a long-drawn argument or process. See the **Lyamuya case** (supra).

Under these circumstances, I have not been persuaded by the alleged illegalities to lead me to state that they are apparent on the face of record and thus can be discerned as a good cause for this court to grant the prayers sought in this application.

From the above reasons, I find that the applicant has not demonstrated sufficient reasons for this court to grant the prayed extension of time. Consequently, I dismiss the application with costs.

Ordered accordingly.



R.A. Ebrahim
JUDGE

Date: 03.06.2022.

Coram: Hon. A.E. Temu - DR.

Applicant: Present.

For the Applicant:

1st Respondent: Present.

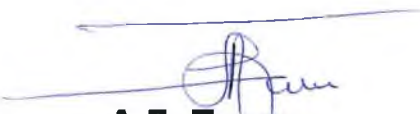
2nd Respondent:
3rd Respondent:
4th Respondent:
5th Respondent: } Absent

For the 2nd , 3rd , and 4th Respondents: Febi Cheyo (Advocate).

B/C: P. Nundwe.

Febi Cheyo (Adv): For ruling today. We are ready.

Court: Ruling delivered in open Chamber Court in the Presence of both parties.


A.E. Temu

Deputy Registrar

03/06/2022
DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
MBEYA