

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 26 OF 2021

(Based on the Original the District Land and Housing Tribunal for Arusha at Arusha,
Application No. 216 of 2018)

ELIHURUMA PAUL MOLLEL.....APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK.....1ST RESPONDENT

ADILI AUCTION MART LIMITED.....2ND RESPONDENT

RULING

05.07.2022 & 14.07.2022

N.R. MWASEBA, J.

This is a ruling in respect of an application for enlargement of time to file an appeal out of time. The applicant is seeking for extension of time to lodge an appeal in respect of a drawn order extracted from a ruling of the District Land and Housing Tribunal of Arusha at Arusha (herein DLHT) delivered by Chairperson G. Kagaruki in Application No. 216 of 2018.

Briefly, the facts of the matter giving rise to this application are that the applicant filed an application at the DLHT against the respondents which was dismissed for want of jurisdiction following the preliminary objection raised by the respondents that the DLHT lacks jurisdiction to entertain the matter. Dissatisfied, the applicant wanted to challenge the said decision; however, as he is out time, he preferred the present application.

When the application was called for hearing on 24.05.2022 Mr Kennedy Chando, learned counsel represented the applicant whereas Mr Nicholaus Leon and Ms Suzan Michael, both learned counsels represented the 1st respondent. The 2nd respondent was duly served on 05.05.2022 but he never appeared before the court for the reasons best known to himself, thus, the application proceeded *ex parte* against him.

It was agreed by both parties that the application be disposed of by way of written submission and the court set out the schedule for filing the same. However, the applicant filed his submission, but the respondent did not file his. On 05.07.2022, when the application was called for mention with view of fixing a ruling date, the counsel for the 1st respondent told the court that they had been served by the submission in chief, but they have no intention to challenge the application. They

conceded to the application and prayed for the court to waive costs of the application.

In his submission, the counsel for the applicant prayed to adopt their affidavit supporting the application to be part of his submission. He added that the reason prevented the applicant from filing his appeal within the prescribed time was the late supply of the copy of ruling and drawn order of the DLHT despite having made several follow-ups. The ruling was delivered on 15.12.2020 and the certified copies were supplied to the applicant on 31.03.2021 while the time to file the appeal had already lapsed. Thus, based on **Section 41 (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019 he prayed for the application to be granted.

I have gone through the submission of the applicant and going through the record, the issue for determination is whether the applicant adduced sufficient cause for the extension of time.

It is a trite law that, this court has discretionary powers to grant an application for extension of time. Nonetheless, that discretion ought to be exercised according to the rules of reason and justice and not according to mere opinions of the parties.

In the case of **Lyamuya Construction Company Ltd Vs the Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, (CAT at Arusha-Unreported), the Court of Appeal laid down four principles that guides the court in exercising the discretion to extend time, the said factors are:

- a) *The applicant must account for all the period of delay.*
- b) *The delay should not be inordinate.*
- c) *The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- d) *If the court feels that there are other sufficient reasons such as existence of point law of sufficient importance, such as the illegality of the decision sought to be challenged."*

In this application the only reason advanced by the applicant for being late is the late supply of the certified copies of the ruling and drawn order from the tribunal.

In the case of **Regional Manager, Tanroads Kagera Vs Ruaha Concrete Company Ltd**. Civil Application No. 9 of 2007 (Unreported) it was held that:

"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determinedly reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."

Based on the cited authorities, I find this to be a good cause to extend time as the applicant could not be able to file his appeal without having the copies of the ruling and drawn order. Thus, the delay was not of his making. More to that, the reason for the delay of being supplied with the necessary documents as adduced by the applicant is supported by the records.

In the circumstances, I allow this application for extension of time to file the appeal. The Applicant should file his appeal in court within thirty (30) days from the date of this Ruling.

Ordered accordingly.

DATED at ARUSHA this 14th day of July 2022.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE

14.07.2022