

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. LAND APPLICATION NO. 105 OF 2020

SOSPETER RAMADHANI
DANIEL NGHAMBI
MWL. VAILETH SAHA } **APPLICANTS**

VERSUS

MCHIWA CHEDEGO..... RESPONDENT
(Arising from the decision of District Land and Housing Tribunal, Dodoma)

(H.E. Mwiha-Chairman)

Dated 02nd of June, 2016

In

Misc. Land Application No. 102 of 2020

.....

RULING

12th May & 15th July, 2022

MDEMU, J:.

The Applicants filed this application supported by their joint affidavit sworn on 30th of November, 2020 praying for extension of time to appeal. The application is under the provisions of Section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E 2019. The Respondent filed a counter affidavit deposed on 15th April, 2021 opposing this application.

Brief facts of this application are that, the Respondent filed land application No. 9 of 2015 at Mtumba Ward Tribunal against the three

Applicants. The decision was delivered in his favour (the Respondent). He later on filed an application for execution. Knowingly that application for execution has been filed against them, the Applicants filed an application for extension of time for revision and stay of execution vide Miscellaneous Application No. 102 of 2015 in the District Land and Housing Tribunal. It was rejected. This led to application for extension of time for revision No. 101 of 2017. On 21st June, 2019 time was extended for 30 days. The application for revision was filed through Land Revision No. 04 of 2019. It was however dismissed for want of jurisdiction as the Applicants were supposed to file an appeal instead of revision, hence this application.

On 12th May, 2022, this application was heard. The Applicants were represented by Mr. Fred Kalonga, learned Advocate whereas the Respondent was represented by Mr. Pascal Msafiri, learned Advocate too.

To persuade this Court in this application, Mr. Fred Kalonga adopted the Applicants' joint affidavit and submitted that, failure to appeal in time was not negligence of the Applicants as they attempted to pursue their rights through revision. He also added that, the intended appeal has an overwhelming chances of success because the decision of the Ward Tribunal and that of District Land and Housing Tribunal are tainted with irregularities which can only be cured through an appeal.

In reply, Mr. Pascal Msafiri adopted the Respondent's counter affidavit and submitted that, the application has no basis. He added that, all through, the Applicants were applying for extension of time thus didn't act promptly, and more so, reasons stated remain an afterthought.

He submitted further to be a principle of law that, the Applicant has to account for days of delay. In this application, he said, the Applicants didn't account for the thirty (30) days of delay from 10th November, 2020 when Land Revision No. 04 of 2019 was dismissed to 7th December, 2020 when this application was filed. He cited the case of **Juma Shomari vs. Kabwele Mambo, Civil Application No. 330/17 of 2020** (unreported) to bolster his assertions. He therefore prayed that the application be dismissed with costs.

Having carefully gone through submissions of both parties, Applicants affidavit and Respondent's counter affidavit, the issue to be determined here is whether the Applicants have shown good and sufficient cause for this court to enlarge time to appeal.

In essence, a person applying for extension of time must demonstrate good and sufficient cause for delay as prescribed in the provisions of section 38(1) of the Land Disputes Courts Act, Cap. 216 that, in land appeals originating from Ward Tribunal:

38. (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court

*Provided that, the High Court **may for good and sufficient cause, extend the time** for filing an appeal either before or after such period of sixty days has expired. (emphasis mine).*

There is a chain of authorities to the effect that, an application for extension of time may be granted upon the Applicant having shown good and sufficient cause as was stated in the case of **Mumello v. Bank of Tanzania (2006) E.A 227** that: -

"It is trite law that an application for extension of time is entirely in the discretion of court to grant or refuse and that, extension may only be granted where it has been sufficiently established that the delay was due to sufficient cause."

In the case of **Lyamuya Construction Company Ltd v. The Board of Registered Trustees of Young Women Christian**

Association of Tanzania, Civil Application No. 2 of 2010(unreported) regarding extension of time, the Court of Appeal issued the following guidelines: -

- 1. The Applicant must account for all the period of delay;*
- 2. The delay should not be inordinate;*
- 3. The Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intended to take;*
- 4. If the Court feels that there are sufficient reasons such as existence of a point of law of sufficient importance, such as illegality of the decision ought to be challenged.*

Back to the application at hand, are there any good and sufficient cause for delay shown by the Applicants for this Court to extend time? In this application, the Applicants in their joint affidavit at paragraphs 2,3,4,5,6 and 7 deposed reasons for delay as hereunder: -

- 2. That, the application in the Ward Tribunal was heard without sufficient notice to us surprisingly we came aware of the application for execution filed against us of which we later on filed an application for extension of*

*time to file revision, stay of execution and revision vide Misc. Application No. 102 of 2015; the application which was rejected. **The copy of the ruling is attached and annexed as annexure F1.***

3. That, then after we filed an application No. 95/2016 for revision which was struck out as it was incompetent.

*4. That, we then after filed an application for extension of time to file revision which was granted by this Court. **The copy of the ruling is attached as annexure F2.***

5. That, we then after filed an application for revision, the same was struck out for the reasons that we ought to have appealed against the decision of the Tribunal rather than filling an application for revision, hence this application. The copy of the ruling is attached as annexure F3.

6. That, failure to file an appeal in time was not occasioned negligently nor deliberately but it was due to reasons stated thereof.

7. That, the intended appeal has great chance of success as both judgement of the ward tribunal and District Land and Housing Tribunal were tainted with a lot of

procedural illegalities as to the composition of the tribunal, coram and a lot to be desired, to wit the case was not proved on the balance of probabilities against us.

Looking at the affidavit and submissions made by Mr. Kalonga; **one**, it was not stated as to when the decision in Land Application No. 9/2015 was delivered by Mtumba Ward Tribunal and **two**, when the Applicants became aware of the application for execution filed against them. On 13th August, 2015, they filed Miscellaneous Application No. 102 of 2015 in the District Land and Housing Tribunal. The decision subject to this application was delivered on 2nd June, 2016. On 13th July, 2017, the Applicants filed an application for extension of time within which they can file an application for revision. The same was granted and on 18th July, 2019 application for revision was filed but was dismissed on 10th November, 2020 hence the instant application filed on 7th December, 2020.

Looking at those series of events, the Applicants did not account from 10th November, 2020 to 7th December, 2020 almost 26 days. It is now a settled law that, each day of delay has to be accounted for as was stated in the case of **Dar es Salaam City Council vs. Group Security**

Co. Ltd, Civil Application No. 234 of 2015 (unreported) and also in **Juma Shomari** (supra), just a few to mention.

That notwithstanding, the impugned decisions subject to this application are tainted with illegalities. It is settled law that, where there is illegality, an application for extension of time may be granted even in circumstances where the Applicant has failed to account for each day of the delay. This view got an expression by the Court of Appeal in the case of **TANESCO vs. Mufungo Leornard Majura and 15 others, Civil Application No. 230 of 2016** (unreported) that: -

"Notwithstanding the fact that, the Applicant in the instant application has failed to sufficiently account for the delay in lodging the application, the fact that there is a complaint of illegality in the decision intended to be impugned suffices to move the court to grant extension of time so that the alleged illegality can be addressed by the Court".

See also in **Paul Juma v. Diesel and Auto Electric Services Ltd and Two Others, Civil Application No. 54 of 2007** (unreported). Therefore, since the Applicants stated that the judgement of the Ward and the District Land and Housing Tribunal are tainted with procedural irregularities, time to file an appeal against such decision of District Land

and Housing Tribunal is hereby extended for a period of sixty (60) days from the date hereof. No order as to costs prescribed.



Gerson J. Mdemu

JUDGE

15/07/2022

DATED at DODOMA this 15th day of July, 2022



Gerson J. Mdemu

JUDGE

15/07/2022.