

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 18 OF 2019

*(Arising from Land Application No. 60 of 2017 in The District Land and Housing
Tribunal of Iringa at Iringa)*

KAITA SAKA APPLICANT

VERSUS

JOHN MSUYA RESPONDENT

RULING

Date of last order: 24/03/2022

Date of Ruling: 29/07/2022

MLYAMBINA, J.

The Applicant, Kaita Saka filed this application before the Court to seek the leave to appeal out of time prescribed by the law so that he can challenge the decision of The District Land and Housing Tribunal (henceforth the DLHT) which was delivered on 26th day of March, 2019. The application was made under provision of *section 41 (2) of the Land Dispute Courts Act [Cap 216 R. E. 2019]* and it was supported by the affidavit affirmed by Mr. Zuberi Hamisi Ngoda, the Applicant's learned Advocate. The Respondent filed his counter affidavit to oppose the application.

In brief, the case as per the Tribunal records are as follows; before the DLHT, the Applicant alleged that he is the owner of the piece of land which is allocated near Abas Mosque at Kilolo "A" street measured one acre. He purchased the land from one Thomas Soko at the consideration of TZs 100,000/= (One Hundred Thousand Tanzania Shillings only) since 2006.

In 2015, the Respondent trespassed to his land and started to construct the foundation when he asked him as to why he is building in his land, he told him that he bought the land from Athanas Chengula. He took him to the Street Chairman and he was ordered to stop the construction but all was in vain. The Respondent continued with what he was doing. Thereafter, they entered into agreement that the Respondent will pay him TZs 1,700,000/= (One Million, Seven Hundred Thousand Tanzania Shillings only), but the Respondent failed to honour the agreement. Hence, he filed the application to the DLHT where the decision was in favour of the Respondent.

Being aggrieved, the Applicant wanted to appeal to this Court but at the time he was served with the copy of the said decision and the decree he discovered that the time to appeal had already lapsed. Hence,

he filed this application for leave to appeal out of time prescribed by the law.

By consent of the parties this application was argued by way of written submission. The Applicant was represented by Mr. Jonas Kajiba, learned Advocate while the Respondent appeared in person, fending for himself. The Applicant filed this application seeking for leave to file his appeal out of time prescribed by the law. He allotted his reasons as to why he failed to appeal within the time at paragraphs 2, 3, 4, 5 and 6 of his affidavits which was affirmed by his counsel.

After carefully consideration of the argument submitted by the parties, the issue to be determined in this application is; *whether the Applicant adduced sufficient reason to be granted the leave to appeal out of time prescribed by the law.* It is a cardinal rule that to grant or to refuse leave to appeal out of time is the discretion of the Court but it has to be exercised judiciously, meaning that the Applicant has to adduce sufficient reason which occasioned his delay. In the case of **Alliance Insurance Corporation Limited v. Arusha Art Limited**, Civil Application No. 33 of 2015, Court of Appeal of Tanzania at Arusha, (unreported), the Court has this to say:

Extension of time is the matter for discretion of the Court and that the Applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time.

Further, the Applicant has brought this application under the provision of *section 41 (2) of the Land Disputes Courts Act as amended by Act No. 2 of 2016*. For clarity purpose, the proviso part of that provision of the law states as follows:

The High Court may for *good cause*, extend the time for filing an appeal either before or after the expiration of such period of forty-five days. [Emphasis added]

The term "good cause" used in the above cited provision of the law is not defined in the Land Disputes Courts Act or any other law but our Courts have tried to define it in number of cases. One of the cases is **Omary Ally Nyamalege (as the administrator of the estate of the late Ally Nyamalege) and Two Others v. Mwanza Engineering Works**, Civil Application No. 94 of 2017, Court of Appeal of Tanzania at Mwanza (unreported) where when the Court of Appeal

was looking into what constitute the term "good cause" used in Rule 10 of the Court of Appeal Rules, 2009 it stated as follows:

... the Court invariably considers factors such as the length of the - delay, the reasons for the delay, the degree of prejudice the Respondent stands to suffer if time is extended, whether the Applicant was diligent, whether there is point of law of sufficient importance such as the illegality of the decision sought to be challenged.

From the quotation above, I will start with point of the length of delay. As per record, the parties conceded that the decision was delivered on 26th day of March, 2019 and this application was lodged on 29th day of May 2019 which is 65 days from the date of judgement. It means therefore that the Applicant was supposed to lodge his appeal before on 9th day of May, 2019. As such, the Applicant delayed for 20 days.

The Applicant submitted further that the reason for his delay was the failure to get the copy of the Judgement on time. At paragraph 4 of the affidavit the Counsel for Applicant said that he got the copy of the judgement on 21st day of May, 2019. Thus, it was already out of the

time to file his appeal. More so, while the Applicant was preparing to lodge the application, his wife got an emergency abdomen surgery and was admitted from 21st to 29th May, 2019. Thus, as a spouse he had a duty to take good care of his wife.

I went through the affidavit and its attachment and discovered as rightly as submitted by the Respondent that the Counsel for the Applicant did not act diligently that's why he got his copy at late time. The copy was ready for collection since on 15th April, 2019 before his wife got an emergency. There is no any evidence which shows that the Applicant got his copy the date he alleges to. For that reason, the Applicant got his copy within the time to file the appeal.

Furthermore, the Applicant did not count for the days of delay from 15th day of April, 2019 to 21st May, 2019. It is well known that the Applicant has to account for each day of his delay even if it is a single day. The same position was stated in the case of **Vietel Tanzania Limited v. Asa General Supplies and Construction Co. Limited**, Civil application No. 126/08 of 2021 Court of Appeal of Tanzania at Mwanza, where the single Judge of the Court of Appeal carry off the principle from the land mark case of **Bushir Hassa v. Latya Lukio Mashayo**, Civil Application No. 03 of 2007, where the same Court held that:

... delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribed period within which certain steps have to be taken.

In the light of the afore principle, the Applicant has failed to account for the days of delay between 15th April, 2019 to 21st May, 2019. There is no any sufficient reason brought forward by the Applicant warranting grant of this application by the Court.

In the premises, this application cannot stand as there is no material in which this Court can exercise its discretion power. I therefore dismiss with costs the application for want of merits. It is so ordered.



Y. J. MLYAMBINA
JUDGE
29/07/2022

Ruling delivered and dated 29th day of July, 2022 through Virtual Court in the presence of Jonas Kajiba, Advocate for the Applicant and in the absence of the Respondent but with oral notice of his wife one Sijapata Benedict. The Applicant was stationed at the High Court of

Tanzania Iringa District Registry's premises. Right of Appeal fully explained.



Y. J. MLYAMBINA
JUDGE
29/07/2022