

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO.83 of 2021

*(C/f Land Appeal No.16 of 2017 at the High Court of Tanzania at Arusha at Arusha ,
Originating from Land Appeal No.16 of 2017 at the District Land and Housing Tribunal
for Manyara at Babati and Application No.7 of 2016 at Endasaki Ward Tribuna.)*

NURDIN ISSA YUSUPH.....APPLICANT

Vs

NEMES SULTAN.....RESPONDENT

RULING

Date of last Order: 16-6-2022

Date of Ruling:22-7-2022

B.K.PHILLIP,J

This application is made under section 11(1) of the Appellate Jurisdiction Act, Cap 141, R.E 2019. The applicant prays for the following orders;

- i) That this Honorable Court be pleased to grant an order for extension of time to file application for leave to appeal to the Court of Appeal of Tanzania on point of law in respect of Miscellaneous Land appeal No.25 of 2019.
- ii) Costs be in course.
- iii) Any other relief this Honourable Court may deem necessary to serve the interests of justice.

The application is supported by an affidavit sworn by the applicant. The respondent filed a counter affidavit in opposition to the application. The

learned Advocates Erick Erasmus Mbeya and Kuwengwa Ndonjekwa appeared for the applicant and respondent respectively. The application was argued by way of written submissions.

Mr. Mbeya started his submission by adopting the contents of the affidavit in support of the application. He went on submitting that the applicant is a lay person. The delay in filing the application for leave to appeal within the time prescribed by the law was due to the applicant's ignorance of the law. The delay was neither intentional nor caused by negligence. He contended that the fact that the applicant is a lay person is a sufficient reason for the delay. He cited that case of **Martha Daniel Vs Peter Thomas Nko (1992) T.L.R. 359** and **National Bank of Commerce Vs Cosmas M. Mukoji (1986) TLR 127** to cement his arguments.

Furthermore, Mr. Mbeya submitted that the applicant was supplied with the copies of the judgment belatedly. The impugned judgment was delivered on 24.4.2020 whereas the copy of that judgment was supplied to the applicant on 11.05.2020. In June 2020 the applicant filed in Court Misc. Civil application No.62 of 2020 which was struck out on 3.5.2021 for being filed in a wrong registry with leave to re-file it within 14 days. Thereafter, the applicant filed Miscellaneous Land Application No.23 of 2021 which was struck out for failure to attach necessary documents. Finally, he filed the instant application. Relying on the provision of section 19(2) of the Law of Limitation Act, Mr. Mbeya contended that the period which lapsed while awaiting to be supplied with the copy of the judgment should be excluded. To cement his arguments he cited the case of **Saida Said Vs Saidi Mohamed (1989) TLR 206.**

Moreover , Mr. Mbeya argued that the impugned decision is tainted with illegalities on the following grounds; That no evidence was adduced to prove that there was any enforceable lease agreement between the applicant and respondent. The nature of the suit property was not fully described in terms of boundaries and value. He cited Order VII Rule 3 of the Civil Procedure Code and the case of **The Registered Trustee of Kanisa la Mungu Tanzania Vs Musa Akonaay and 3 others , Land case no. 36/2017** (unreported) to bolster his argument. That there is no record showing that the ward Tribunal had pecuniary jurisdiction over the suit land. He cited the case of **Meneja Kiwanda cha Saruji Wazo Vs Hermelinda Joseph Bikongoro , Misc Land Case Appeal No.20/2020** and **Fidelis Kutika Vs Sophia Kutika , Misc. Land Case Appeal No.7/2010.**(Both unreported)

In addition, Mr.Mbeya submitted as follows; That there are two distinct versions of the proceedings of the Ward Tribunal. The records of the ward Tribunal shows that the case was heard on 25th December 2016, which was a public holiday. He contended that the issue on existence of two versions of the proceedings of the Ward tribunal was noted and discussed in the impugned decision He cited the case of **Principal Secretary, Ministry of Defence , National service Vs Devram Valambhia (1992) TLR 185** and **Kalunga and Company Advocate Vs National Bank of Commerce Ltd (2006) TLR 235** to bolster his argument and implored this Court to grant this application on the reason that the proceedings and judgment of the Ward Tribunal are tainted with illegalities.

In addition, Mr. Mbeya cited Article 13(a) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time. He contended that the applicant should be accorded his right to be heard. He has already filed the notice of intention to appeal. Also, he was of the view that this application has not been challenged as the respondent's response has been evasive.

In rebuttal, Mr. Ndonjekwa, submitted as follows; that the heading of the application at hand shows that it intends to challenge the decision of this Court in Misc.Land Application No.36 of 2021 which was strike out on 7th day October 2021,whereas the substance of the application indicates that this application is in respect of the decision of this Court in Misc. Land Appeal No.25 of 2019.He contended that Misc Application No.36 of 2021 was struck out and this Court is *functus officio* .It cannot deal with the said Misc. Land Application No. 36 of 2021.To cement his arguments he cited the case of **Re Vs G.M (1941) 3 ALL ER.**

Furthermore, he contended that this application has been filed as a delaying tactic to obstruct the respondent from enjoying the fruits of the decision of the Tribunal and this Honourable Court. He implored this Court to dismiss this application with costs .

In rejoinder, Mr. Mbeya reiterated his submission in chief. Further, he submitted that the respondent's arguments are misconceived. Nowhere in this application and in the applicant's submission is indicated that the applicant intends to challenge Ruling in Misc Land Application No.36 of 2021.The Chamber summons and the applicant's submission in chief all

are for seeking the extension of time to file leave to appeal to the Court of Appeal on point of law in respect of Misc. Land Appeal No 25 of 2019.

Mr. Mbeya was of the view that the cases cited by Mr. Ndonjekwa are distinguishable from this application.

Having analyzed the rival arguments made by the learned advocates, let me point out that in his submission Mr. Ndonjekwa's did not touch the merit of the application. The concerns he raised are unfounded because the title of this application as well as the chamber summons and the affidavit in support of the same indicate clearly that this application is in respect of the decision of this Court in Misc land application No. 25 of 2019.

Now let me proceed with the determination of the merit of this application. First of all, It is noteworthy that an order for extension of time is among the discretionary orders which can granted this Court. It is a trite law that in an application for extension of time, the applicant has to give sufficient cause for delay and account for each day of delay. [See the case **Hassan Bushiri vs Latifa Lukio Mashao, Civil Application No.3 of 2007** (unreported)]. Though the law does not define what constitutes sufficient cause, our Courts have lied down a number of factors to be considered when deciding an application for extension of time. In the case of **Tanga Cement Co. Ltd Vs Jumanne D. Masangwa and another , TAG Civil Application No.6 of 2001** (unreported) the Court of Appeal said the following;

" What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence part of the applicant.."

The Court's record shows that the applicant filed the notice of intention to appeal timely. Thereafter he filed the application for extension of time for leave to appeal to the Court of Appeal on point of law vide application No. 62 of 2020 which was withdrawn on 3/5/2021 with leave to re-file it within 14 days. Then, he re-filed that application vide application No. 36 of 2021 which was struck out on 10th July 2021. This application was filed on 15th October 2021. From 10th July to 15th October 2021 there are about 100 days which Mr. Mbeya have not accounted for. The applicant has avoided to disclose the date he filed the first application which was withdrawn. Mr. Mbeya has submitted that the applicant's failure to file the application for leave to appeal to the Court of Appeal within the time prescribed by the law is due to his ignorance of the law. Upon perusing the Court's records, I noted that Mr. Mbeya represented the applicant in Misc. Land Appeal No.25 of 2019, Misc Application No.62 of 2020, and Misc Civil application No.36 of 2021. Therefore, when it comes to accounting for the days of delay, the issue of ignorance of the law is irrelevant. I have read the case of **Martha Daniel** (supra) and **National Bank of Commerce** (supra) relied upon by Mr. Mbeya. What I have gathered is that the same are distinguishable from the facts of this case. In the case **Martha Daniel** (supra) applicant was a lay person and unrepresented, and had filed her appeal timely, but the same was struck out for not being proper before the Court, whereas in this case the applicant enjoyed the legal services of

learned advocate Mbeya and the delay is inordinate. In the case of **National Bank of Commerce** (supra) the Court observed that there was a delay of 60 days only and the Court was of the view that it was not inordinate.

From the foregoing it is the finding of this Court that Mr. Mbeya has not managed to account for each day of delay as required by the law.

With regard to the alleged illegalities, it is my settled opinion that all of the alleged illegalities do not qualify to be termed so with the exception of the issue involving the proceedings of the Ward Tribunal, to wit; whether there are two distinct versions of the proceedings of the Ward Tribunal. I am saying so because the issue on whether or not there was a lease agreement is a matter which calls for analysis of the evidence adduced and the finding of this Court in respect of that issue cannot be termed to be a ground on illegality. The same applies to the allegations that there was no lease agreement between the appellant and the respondent, and that the Ward Tribunal had no pecuniary Jurisdiction to entertain the dispute between the parties.

Back to issue involving the proceedings and judgment of the Ward Tribunal, in my opinion the issue of propriety of the proceedings of the Ward Tribunal goes to the root of the legality of the decision of the Ward Tribunal which has been upheld by lower Court and this Court. Under the circumstances, the principle laid down by the Court of Appeal in the case of the **Principal Secretary , Ministry of defence, National Service** (supra) and **Kalunga and Company Advocate** (supra) that is, where

the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute " sufficient reason" for delay is applicable in this case.

On the strength of the decision of the Court of Appeal in the case of **Principal Secretary , Ministry of defence, National Service** (supra) and **Kalunga and Company Advocate** (supra), I hereby grant this application. The applicant has to file his application for leave to appeal to the Court Appeal on point on law within fourteen 14 days from the date of this order. Costs will be in course.



Dated this 22nd day of July 2022

A handwritten signature in black ink, appearing to read "B.K. Phillip", written over a large, faint watermark that says "ORIGINAL".

B.K.PHILLIP

JUDGE