

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MOROGORO

MISC. LAND APPLICATION NO. 14 OF 2021

(Originating from Land Application No. 198 of 2016; in the District Land and Housing Tribunal for Morogoro District, at Morogoro)

DEOGRATIUS SURAAPPLICANT

VERSUS

FORECAST MICROFINANCE (T) LTD1ST RESPONDENT
SANGA INVESTEMENT GENERAL SUPPLY AND AUCTION
MART.....2ND RESPONDENT

RULING

20th June & 4th August, 2022

CHABA, J.

This an application for extension of time within which the applicant may be allowed to file an appeal out of time against the decision of the District Land and Housing Tribunal for Morogoro District at Morogoro (the DLHT) in Land Application No. 198 of 2016 delivered on 31/05/2021. The application has been preferred under section 41 (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] and any other enabling provision of the law. It is being supported by an affidavit deposed by the applicant himself, Deogratius Sura.

Briefly, the matter arose in this way: The applicant herein and one person by the name of Sister Blandina Thomas (the Applicants at the trial DLHT) filed an application against the 1st and 2nd respondents herein before the DLHT for Morogoro seeking for the following reliefs against the respondents: That, the DLHT had to order the respondents to stop from interfering in anyway with the suit land; that, the 1st and 2nd respondents be restrained from attaching and selling an incomplete house (Boma)

located at Plot No. 445, Block Q within Morogoro Municipality; that, the 1st applicant at trial one Sister Blandina Thomas be given reasonable time to complete payments the remaining balance due to frustration of the first agreement; that, costs of the application and any other reliefs as the DLHT could deem fit and just to grant.

Essentially, one Sister Blandina Thomas (1st applicant at trial) applied for personal loan and acquired the same amounting to Tshs. 11,000,000/= from the 1st respondent, Forecast Microfinance (T) Ltd and the applicant herein pledged his incomplete house (Boma) as security for repayment of loan commonly known as collateral. The said Sister Blandina received her loan on 22/04/2016 and she was supposed to repay the said loan within three (3) months with effect from 22/05/2016 to 22/07/2016. However, Sister Blandina did not comply with the agreed terms for loan agreement because she failed to repay the loan advanced to her plus the interest accrued thereto on the ground of ill-health.

After the full trial, the DLHT ruled in favour of the respondents and the Land Application No. 198 of 2016 was dismissed for want of merits. It appears that the applicant was aggrieved by the decision of the DLHT but he found himself out of time hence this application. The supporting affidavit sworn by the applicant contain substance which are indicated at the introduction part and paragraphs 1, 2, and 3 respectively. The other paragraphs comprise the reasons for delay as shown in paragraphs 4, 5, 6 and 7 which shall be referred soon, and some were extraneous devised to look as grounds for appeal.

When the application was called on for hearing, the applicant appeared in person and one Ms. Salma Juma, the personal secretary to the 1st respondent's company appeared for the 1st respondent, whereas the 2nd respondent did not enter appearance despite of being properly served with

the summons, application and other necessary documents. As there was no any official information as to why the 2nd respondent did not attend before the court, the matter was heard ex-parte against the 2nd respondent.

Submitting in support of this application, the applicant submitted that; Mh. Jaji ninadai nipewe "offer" ya nyumba yangu, kwa sababu madai ambayo walikuwa wakidai tayari walilipwa na mkopaji aliyekopa. Walilipwa Tshs. 10,500,000/= (Milioni kumi na laki tano). Hivyo bado wanadai kiasi cha Tshs. 500,000/=. Mkopaji ndiye aliyelipa hiyo fedha na mimi ndiye niikuwa mdhamini. Nashangaa kwamba hati yangu ya nyumba mpaka sasa bado hajanipa na mkopaji wanamfahamu wanasema kwamba mimi bado nadaiwa (wanadai kutoka kwangu) jumla ya Tshs. 18,000,000/= kama riba.

Niliwaambia kuwa mimi sikukopa hiyo fedha na waliyemkopesha wanamfahamu na tayari alishalipa sehemu ya fedha hiyo kiasi cha Tshs. 10,500,000/= na fedha iliyobaki kama deni ni Tshs. 500,000/= tu. Mkopaji anaitwa Sister Blandina Thomas Sembu. Naomba waendeleo kumtafuta ili aweze kuwalipa deni lao.

In reply, though Ms. Salma Juma who appeared for the 1st respondent told this court that she was ready to continue with the hearing of this application, but during hearing of the application she stated that at the material time had nothing to say and further stated that as she was not a spokesperson to her institution, then she was unable to argue anything before the court.

In rejoinder, the applicant submitted to this effect; Mh. Jaji basi naomba niongezewe muda ili niweze kukata rufaa angalau mpaka mwezi wa nane ili niweze kupata fedha nifungie kesi kudai fedha yangu.

I have carefully gone through the chamber summons and its

supporting affidavit and also considered the oral submissions advanced by the parties. The question for consideration and determination is whether the instant application has merit.

Before I go further, I find it apt to start with the provisions of section 41 (2) of the Land Disputes Courts Act [Cap. 216 R. E. 2019] cited by the applicant to move this court. The law provides that:

"(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days".

Basing on the above provision of the law, it follows therefore that the court has discretionary power to grant extension of time if beforehand there is sufficient reasons and good cause to warrant this court exercise her discretion. This principle of law has been stated in several cases including the cases of **Benedict Mumello v. Bank of Tanzania**, [2006] 1 EA 227; **Bertha Bwire v. Alex Maganga**, (Civil Reference No.7 of 2016) [2017] TZCA 133; (20 November 2017); **Zuberi Mussa v. Shinyanga Town Council**, Civil Application No. 3 of 2007 (unreported). In **Bertha Bwire v. Alex Maganga**, (supra) our Apex Court held inter-alia that:

*"...It is trite law that extension of time is a matter of discretion on the part of the Court and that **such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case.***

However, the term "good cause" or "sufficient cause" has not been specifically defined. But the courts have discretionary construed that *good cause* usually depends on the circumstances of each case. For instance, in **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Application No. 4 of 2001 (unreported), the Court of Appeal (T) (Mroso,

JA.) had the following to state:

"This court in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no particular reason or reasons have been set out as standard sufficient reasons. It all depends on the particular circumstances of each application".

As regards to the factors that may be considered as *good cause* or *sufficient cause*, the proposition was well articulated in the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association Tanzania**, Civil Application No. 2 of 2010 (unreported) where the Court held among other things that:

"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrary. On the authorities however, the following guidelines may be formulated: -

- (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 reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

It is also settled that, an affidavit filed in support of the application, the deponent has a duty to provide reasons in the affidavit so as to enable the court to exercise her discretion. This proposition of the law was underscored by our Apex Court in the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman Bunju Village Government & 11 Others**, where the Court held inter-alia that:

"...reason for failure to appeal on time must be given on affidavit not on submissions because submissions are not evidence."

Looking at the affidavit deposed by the applicant and filed in court to support the application, the applicant accentuated that the delay to file his appeal in time was occasioned by the late supply of the certified copies of judgement and decree from the DLHT. This ground has been highlighted in the affidavit deposed by the applicant under paragraphs 4 and 5 respectively, which reads:

"4. That, the applicant herein was not given a copy of the said judgement and decree on time no matter how hard he try (sic), thus hinder the very right to appeal in time. (Copy of the said notice of appeal and letter to be supplied with copies of judgement and Decree hereby attached and marked as Annexure AACL2).

5. That, from all that has been explained above it is necessary for this Honourable High Court to grant leave to appeal out of time as the applicant has sufficient cause and overwhelming chance to succeeds on intending appeal.

As noted above, it is common ground that the impugned decision was delivered on 31/05/2021 and the law requires that the applicant had to file his appeal within 45 days from the date of the decision which expired on 15/07/2021. Explaining why he delayed to file his appeal, the applicant states that such a delay was occasioned by the late supply of the relevant documents, i.e., copies of judgement and decree. According to the record, though he applied to be supplied with the copies of judgment and decree on 7/6/2021, but I found out that his affidavit is silence as to when the same were supplied to him. Indeed, the affidavit do not contain sufficient explanations why he failed to lodge his appeal within the prescribed time. And the worth thing is, during hearing of the application the applicant did

not advance any material statements giving reasons why he delayed to file his appeal so as to support his application. Instead, he gave a story to the effect that he is claiming his "Offer" (probably an offer of a right of occupancy) from the 1st respondent to the extent of his submissions in chief which was uncalled for.

It has been decided in a number of cases that, delay of even a single day must be accounted for. This position of the law was underscored by the Court of Appeal of Tanzania in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) where the Court held inter-alia; I quote:

"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

From the foregoing observations, and to the extent of my findings based on legal principles explicated by the Court of Appeal of Tanzania, it is my findings that the applicant totally failed to account for the delays of all 126 days as alluded to above. This justifies that the applicant has failed to advance *good case* or *sufficient cause* to persuade this court exercise her discretionary power.

Before I conclude, I also came across with the document titled Applicant Written Submission **lodged by the applicant himself before this court on 14th July, 2022** while the court record or proceedings of this court neither comprise orders stating or showing that parties themselves prayed to dispose the matter by way of written submissions nor orders issued by the court directing the parties to dispose the matter to that effect. As the document appears to intrude the knowledge of this court and was received and filed without permission or orders of this court,

the same is hereby disregarded and discarded as well.

Having so said, I find that this application is non-meritorious. It is hereby dismissed with costs.

Order accordingly.

DATED at MOROGORO this 4th day of August, 2022.



M. J. CHABA

JUDGE

4/08/2022

COURT:

Ruling delivered at my hand and Seal of this Court in Chambers this 4th day of August, 2022 in the presence of the Applicant who appeared in person, unrepresented but in absence of 1st and 2nd respondents.



M. J. CHABA

JUDGE

4/08/2022

Rights of the parties fully explained.



M. J. CHABA

JUDGE

4/08/2022