

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPLICATION NO. 64 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Tarime at
Tarime in Land Application No. 14 of 2016)*

BETWEEN

KEHONGO MOSETI 1ST APPLICANT

MWERA MOSETI 2ND APPLICANT

VERSUS

MULUGA PETER MOHORYA (The Administrator

Of the late Mohoria Kenene t/a Peter Mohorya) RESPONDENT

RULING

25th March & 29th April, 2022

A. A. MBAGWA, J.

This is an application for extension of time within which to appeal against the decision of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT) in Land Application No. 14 of 2016. The application has been brought by way of chamber summons made under section 41 (2) of the Land Dispute Courts Act [Cap 216 R.E 2019]. The chamber summons is supported by an affidavit jointly sworn by the applicants.

In contrast, the application was opposed by the respondent through a counter affidavit sworn by Julius Mushobozi, learned advocate for the respondent.

As depicted from the affidavit, the background which gave rise to this application may be recounted as follows; The respondent successfully sued to the applicants in Land Application No. 14 of 2016 before the DLHT. The applicants were aggrieved by the decision of the DLHT hence appealed to this Court (Kisanya, J) in Land Appeal No. 5 of 2020. However, the appeal was struck out for being incompetent as the name of the parties in the decree, judgment and petition of appeal differed.

Consequently, the applicants started the process to rectify the errors. Upon rectification of errors, the applicants are still determined to appeal but the prescribed time for lodging appeal had lapsed. As such, they have brought this application for extension of time within which to file an appeal against the decision of the DLHT in Land Application No. 14 of 2016

In their joint affidavit, the applicants state that the delay was caused by technical delay (striking out of Land Appeal No. 5 of 2020) and financial constraints. Further, the applicants contend that the judgment is tainted with illegalities to wit; the alleged seller of the land in dispute had no power to sell the said land to the respondent and that the procedures of selling a village land were not complied with as per the law.

When the matter was called on for hearing, the applicants were represented by Christopher Waikama, learned advocate while the respondent enjoyed the services of Marwa Samwel, learned advocate.

Submitting in supporting of the application, Mr. Waikama pointed out that it is the settled law that extension of time is discretion of the Court and that one of the reasons for extension is technical delay. He proceeded that as per paragraph 4 of the affidavit, it is clear that the applicants pursued their appeal within time but later on the appeal was struck out on technicalities. To bolster his argument the learned counsel referred to the case of **Costantine Victor John vs Muhimbili National Hospital**, Civil Application No. 214/18 of 2020 CAT at Dar es salaam where it was held that technical delay is a good ground.

Upon being probed by the court on the delay between striking out of the first appeal and filing of the present application, the counsel replied that the applicants were facing financial constraints. He further submitted that the application, if granted, will not occasion any prejudice to the respondent.

In reply, Mr. Samwel submitted that the appeal was struck out on 11th September, 2020 because of errors but the applicants took too long to institute the present application i. e on 17th August, 2021 without stating

the reasons for delay. Referring to the case of **Ramadhani J. Kilwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT at Dar es salaam, the learned counsel submitted that the applicants ought to account for each and single day of delay. Also, the counsel cited the case of **Ilimu Shija vs Shingisha Madukwa**, Civil Appeal No. 310 of 2017, CAT at Tabora and argued that the delay should not be inordinate and the applicant must show diligence and not sloppiness. With respect to the application of overriding objective principle, he was of the view that the principle does not entitle the applicants to violate the law.

Regarding the illegality, the counsel submitted that the same should not be merely pleaded like in the instant case rather they should be apparent on the face of record. He cemented his argument by citing the case of **Tito Patrick Sanga vs Ismail Yaru Mohamed and 3 Others**, Civil Application No. 17/17 of 2020, CAT at Dar es salaam and **FINCA Tanzania Ltd and another vs Boniface Mwalukisa**, Civil Application No. 589/12 of 2018, CAT at Iringa.

Mr. Samwel argued that the respondent would be prejudiced if the Court grants application because the execution has already commenced. He finally prayed the Court to dismiss the application with costs.

In rejoinder, Mr. Waikama contended that the cases cited by the respondent's counsel are distinguishable from the matter at hand. He then reiterated his submission that the period that the applicants delayed, they were suffering financial constraints.

Having gone through the submissions by both parties, there is no gainsaying that the issue for determination is whether the applicants have demonstrated good cause of delay for this Court to grant them extension of time.

The law does not define what a good cause is. However, case law has established factors to be considered in determining whether good cause has been established. Some of the factors include, the length of the delay; whether the applicant have accounted for all the period of delay and demonstrated diligence and not laziness, negligence or sloppiness in taking the required step; whether the Court finds other sufficient reasons, such as the existence of a point of law of sufficient importance, like the illegality of the decision sought to be challenged. See the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). It is also an established principle that delay of even a single day must be accounted. See for

instance, the case of **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported).

Reverting to the issue under consideration, it is common ground that the applicants have advanced technical delay, financial constraints and illegalities as grounds for extension of time. Whereas I agree with the applicant's counsel that technical delay may be the reason for extension, it is my findings that the applicants failed to account for each day of delay from the day the first appeal was struck out to the day of filing the present application.

The first appeal was struck out on 11th September, 2020 for having errors in the judgment. As per the documents attached to applicant's affidavit, the judgment and decree of the DLHT which led to the striking out of the first appeal were amended and certified on 18th December, 2020 which means the documents were ready to be collected since then. However, the applicant did not file the application until on 17th August, 2021.

From 18th December, 2020 to 17th August, 2021 is almost eight months but the applicants did not account for this delay. In the circumstances, the ground of technical delay cannot be sustained.

Further, the financial predicaments pleaded by the applicants could not be established nor was there plausible elaboration to that effect. As such, I disregard this ground.

With regard to the alleged illegalities in the judgment of the trial Tribunal, I am at one with the respondent's counsel that the same should be apparent on face of records. After passing through the judgment of the trial Tribunal, I did not find any illegalities contended by the applicants.

Given that the errors which led to the striking out of Land Appeal No. 5 of 2020 were corrected on 18th December, 2019, and the applicants filed the present application on 17th August, 2021, it goes without saying that there was inordinate delay which the applicants failed to account for. Indeed, the applicants were negligent.

That said and done, I find this application devoid of merits and consequently, I dismiss it with costs.

It is so ordered.

Right of appeal explained.




A. A. Mbagwa

JUDGE

29/04/2022

Court: This ruling has been delivered in the presence of applicants and respondents this 29th day of April, 2022.


A. A. Mbagwa

JUDGE

29/04/2022