

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS LAND APPLICATION NO. 04 OF 2022

*(Originating from the decision of the Land and Housing Tribunal for Tunduru in Land Appeal No. 07 of 2018, delivered by Hon. H. ? I Lukeha Chairman)*

HASSANI HAJI ABDALA ..... APPLICANT

VERSUS

KIKUNDI CHA NEEMA ..... RESPONDENT

**RULING**

Date of last Order: 19/07/2022

Date of Ruling: 18/08/2022

**MLYAMBINA, J.**

The Applicant, Hassani Haji Abdala filed this application before this Court seeking for leave to file the appeal out of time prescribed by law. The application was made under the provision of *section 14 (1) of the Law of Limitation Act [Cap 89 RE 2019]* and *section 41 (2) of the Land Dispute Court Act [Cap 216 RE 2019]*. The application was supported with an affidavit sworn by the Applicant. The Respondent contested the application by filing his counter affidavit which was sworn by Salome Kiongole the Principle Officer of the Respondent.

The background of the matter as appearing in the record of the Trial Tribunal is to the effect that; in 1997, the Respondent herein

purchased a piece of land from the late Haji Mkili @ Tolu with a consideration of TZs 60,000/= (Sixty Thousand Shillings only). He developed the said land by planting various seedlings and plant. In 2015, the Applicant trespassed to the land and he destroyed and uprooted the plants therein. He disturbed the Applicant future development and cause the loss of TZs 2,000,000/= (Two Million Shillings Only). After full hearing, the Tribunal decided the matter in favor of the Respondent herein.

The Applicant herein appealed to this Court against the decision in time. Unfortunately, on 24<sup>th</sup> June, 2021 the appeal was struck out for being incompetent accompanied by the defective decree. On 25<sup>th</sup> July, 2021 the Applicant wrote a letter to the Tribunal for rectification of the defect in the decree. He was supplied with a copy of the rectified decree on 15<sup>th</sup> November, 2021. This application was filed on 24<sup>th</sup> June, 2022.

By consent of the parties, this application was disposed off by way of written submission. The Respondent enjoying the service of Mr. Kaizilege Prosper, learned Advocate while the Applicant appeared without any legal representation. In his submission the Applicant submitted that he is seeking a leave of this Court to file his appeal out

of time prescribed by the law against the judgement and decree delivered on 13<sup>th</sup> November, 2020 before Hon. H. I. Lukeha.

The Applicant averred that he filed his appeal within the time. However, his appeal was struck out for being incompetent due to the defect found in the decree. The Trial Tribunal failed to provide clear information as to where the suit land is located as required by the law. The Applicant averred further that, he diligently made tireless efforts and follow ups by writing a letter dated 24<sup>th</sup> June, 2021 to the trial tribunal for rectification of the defects appearing in the decree. Finally, he was supplied with the copy of the rectified decree on 15<sup>th</sup> November, 2021.

The Applicant found himself out of time to lodge an appeal, hence this application for extension of time to file an appeal out of time prescribed by the law. The Applicant was of view that his delay was beyond his control and not caused by negligence. He buttressed his argument with the case of **Dr. Ally Shabhay v. Tanga Bohora Jamaat** [1997] TLR 305 at 306, where the Court held that:

*Those who come to Court of law must not show unnecessary delay in doing so, they must show great diligence.*

*The Applicant submitted that, he acted promptly and diligently to access the Court of law despite the delay which was caused by the trial tribunal. Therefore, he calls this honorable Court to consider his prayer as he shows initiative and good cause to file the appeal in time but failed due to the above reasons.*

In response, the counsel for the Respondent submitted that, it is prescribed by the law that whoever aggrieved by the decision of the District Land and Housing Tribunal has to appeal to the High Court within 45 days. The counsel clarified that the aim of providing specific time for appeal is to make findings on whether there is any clerical error made by the Court and therefore ask for correctness.

Moreover, the counsel averred that, when someone prepares and file an appeal before the Court, he has to observe the defect and ensure that the rectification is made before filing. Thus, at the time of preparing the appeal the Applicant could have observed the defect in the decree which is nothing but negligence. It means that, all legal requirements have to be observed. He cited the case of **Ernest Maguha v. Dalia Hassani and Another**, Misc. Land Application No. 8 of 2019, High Court of Tanzania at Songea (unreported) at page 10.

The counsel submitted that, the Applicant negligently misused the time provided by the law for appeal, by lodging the appeal while knowingly that the provision of *Order XXXIX Rule 1 and Order XX Rule 9 of the Civil Procedure Code [Cap 33 R. E. 2019]* has not complied to as a result the case was struck out. The counsel considered that the Applicant has to enjoy its rips of being negligent. He backed up his argument with the case of **Fortunatus Masha v. William Shija** (1997) TLR 1952 where the Court said that; in the circumstances, the negligence, if any, really refers to the filing of an incompetent appeal not the delay in filing it.

The counsel insisted that the Applicant failed to show sufficient reasons for delay but rather he proved his negligence. He supported his statement with the case of **Ernest Maguha** (*supra*) at page 10 and 11.

Apart from the above arguments, the counsel submitted further that paragraphs 4 and 5 of the Applicants' application contain false or untrue information. It is not true that the Applicant requested for rectification so that he can appeal timely but rather he requested for rectification after his appeal being struck out for being incompetent. For the Applicant to state that he made tireless effort so that he could appeal timely before this Court imply that paragraph 4 contains untrue

statement. He supported his reasoning with the case of **Uganda v. Commissioner of Prisons, Ex parte Matovu** (1966) 1 EA 514, **Ignazio Messina v. Willow Investment SPRL**, Civil Application No. 21 of 2001, Court of Appeal of Tanzania (unreported). In the case of **Robertt S. Lova and Mohamed Manjole v. Ministry of Natural Resources and Tourism and Another**, Revision No. 742 of 2018, High Court of Tanzania, Labour Division at Dar es Salaam, the Court has this to say:

An affidavit which is tainted with un true is no affidavit at all and can not be relied to support an application. The false evidence can not be acted upon to resolve any issue.

The counsel advised this Court to expunge the said paragraph from the affidavit. To that effect, the remaining paragraph will have no basis to stand. He further prayed the application to be dismissed with cost.

The Court has carefully considered the submission made to this Court by the Applicant and the counsel for the Respondent. *Order XXXIX Rule 1(1) of the Civil Procedure Code (supra)* requires the appellant to attach a copy of Decree and Judgment is appealing against with his petition of appeal. It is the requirement of the law that the said

decree has to tally with the judgement. But the Applicant was supplied with the copy of the amended decree after 5 months from the date when his first appeal was struck out for being incompetent. The decree which he attached was found with defects. It is from that circumstance the Court has found the issue to determine in this application is; *Whether the Applicant has adduced sufficient cause for delay to file the appeal in the Court within the time prescribed by the law to warrant the Court to grant him extension of time to file appeal in the Court out of time.*

In order to be able to determine the above issue properly the Court has found proper to have a look on what amount to sufficient cause as defined in the case of the **CRDB (1996) LIMITED V. GEORGE KILINDU**, Civil Application No. 162 of 2006, CAT at DSM (unreported) where it was stated that: -

What amount to sufficient cause has not been defined but from cases decided by the Court it includes among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the Applicant.

Starting with the factor of bringing the application promptly the Court is of the findings that the Applicant lodged the appeal on 8<sup>th</sup> December, 2020 challenging the decision of the District Land and

Housing Tribunal which was delivered on 13<sup>th</sup> November, 2020. His appeal was struck out by this Court on 25<sup>th</sup> July, 2021 by Honorable Arufani, J. for being incompetent. The decree which was accompanied by the memorandum of appeal was defective. On the same date when the appeal was struck out, the Applicant wrote the letter to the District Land and Housing Tribunal so that his decree can be rectified. The Applicant was supplied with the emended decree on 15<sup>th</sup> November, 2021 as deposed in paragraph 5 of the affidavit of the Applicant. This application was filed on 5<sup>th</sup> April, 2022.

More than four (4) months passed since the Applicant was supplied with the amended copy of the decree. No any explanation as to why, where and what delayed him to file this application. It is a cardinal rule that, the Applicant has to account for each day of delay even if it is a single day. In the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007, Court of Appeal has this to say:

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


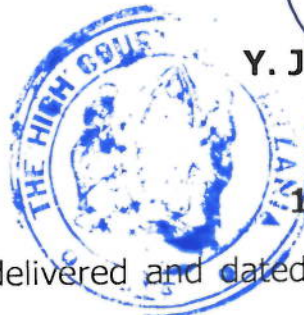


Being guided by the above quoted authority, the Applicant failed to account for more than 140 days of his delay and to provide valid explanation as to why he did not lodge this application as soon as he was supplied with the amended copy of the decree. Though to grant or to refuse extension of time is discretion of the Court, it has to be exercised judiciously. The Applicant has to provide sufficient reasons for the Court to exercise its discretion in favour of the extension of time. See the case of **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015, Court of Appeal of Tanzania at Arusha; **Moto Matiko Mabanga v. Ophir Energy PLC, Ophir Service PTY Ltd and British Gas Tanzania Limited**, Civil Application No. 463/01 of 2017, Court of Appeal of Tanzania at Dar es Salaam to mention few. The Applicant was negligent to act accordingly.

As for the issue of the untrue/false statement at paragraph 4 and 5 of the Applicant affidavit, this Court found as right as stated by the counsel for the Respondent, the affidavit tainted with the untrue/false statement is like no affidavit at all as it was stated in the case of **Robert S. Lova and Mohamed Manjole** (*supra*). I went through the Applicant affidavit specifically at paragraph 4 and 5 and the Court is of the opinion that; what the Applicant meant was to appeal as early as possible after

his appeal being struck out and not to cause another unnecessary delay. The Applicant confessed that his appeal was struck out. And more important, the untrue /false statement referred by the counsel for the Respondent did not go to the root of the application.

It is from the above stated reasons the Court is of the findings that the Applicant has failed to satisfy the Court so that it can use its discretion power in favor of the Applicant and grant him an extension of time to appeal out of time. In the premises, the application is hereby dismissed with costs for failure to provide good reason for his delay to file his appeal within the time prescribed by the law. Order accordingly.

  
  
**Y. J. MLYAMBINA**  
**JUDGE**  
**18/08/2022**

Ruling delivered and dated 18<sup>th</sup> August, 2022 in the presence of the Applicant in person and Counsel Denis Lazaro holding brief of Kaizelege Prosper for the Respondent. Right of Appeal explained.

  
  
**Y. J. MLYAMBINA**  
**JUDGE**  
**18/08/2022**