

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MISC.LAND APPLICATION NO 15 OF 2021**

*(Arising from Land Application No. 17 of 2017 before the District Land  
and Housing Tribunal for Kahama )*

**GEORGE BUYAMBA .....APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEE OF SDA CHURCH ..... RESPONDENT**

**RULING**

**MKWIZU, J.**

The applicant, GEORGE BUYAMBA filed an application against the respondents, REGISTERED TRUSTEES OF SDA CHURCH seeking for enlargement of time to file appeal against the decision by the DLHT in Land Application No. 17 of 2017. The application was made under section 41(2) of the Land Disputes Courts Act (Cap. 216 R.E. 2019) and it was supported by the affidavit of the applicant. The application was opposed by the respondent through their counter affidavit and oral submissions by their counsel.

At the hearing, Mr Audax Constantine represented the Applicant while the respondent had the services of Richard Deus also learned advocate. In his submissions in support of the application, the applicant's counsel apart from adopting his affidavit in support of the application gave clarification on the five reasons for the delay. **One** that the applicant's former advocate- Mr Kaunda was negligent. He said, applicant who is a lay person

was all along represented by the advocate who failed to act professionally and therefore the applicant should not be punished for the negligence of his advocate. Mr Audax cited the case of **Zamana Ally (Mama Bushiri) V Omari Chipanta & Others**, Misc. Land Application No 449 of 2019

**Second**, is a technical delay deposed in paragraphs 11 to 16 of the affidavit in support of the affidavit. He argued that, Land Revision No 2 of 2020 and Misc. Land Application No. 36 of 2020 were struck out for being incompetent and therefore times spent in pursuing the two mentioned matters are excludable is reckoning time delayed. He again supported his stance by the decision of **Fortunatus Masha V William Shija and Another**, (1997) TLR 154 and **Bhaya Engineering and Contruction Co Ltd V Hamour Ahmed Nassor**, Civil Application No. 342/01/2017(Unreported).

**Third** reason is an illegality as deposed in paragraph 21 (a) (b) and (c) of the affidavit in support of the application. **Fourth** reason is a late knowledge by the applicant of the existence of the judgement of the trial tribunal in Land Application No. 17 of 2017. On this the counsel said the decision was handed down on 9/10/2019 in the absence of the applicant and his advocate and without notice and he only came to know of its existence on 29/1/2020 and the **fifth** reason is the delay in obtaining orders of the court and preparation of necessary documents for filling.

He lastly prayed for the application to be allowed



Mr Deus for the respondent began his submissions by citing to the court the decision in **Tauka Theodory Frednand V.Eva Zakayo Mwita & Others** Civil Reference No 16 of 2017 ( Unreported ) arguing that in an application for extension of time, the applicant must account for all days of the delay, the delay must not be inordinate and applicant must show diligence and not apathy. He contended that, the applicants failed to account for the delay. The decision by the trial tribunal was given on 9/10/2019 and this application was filed on 13/4/2021 almost 1 year and six months. And that according to the applicant's affidavit in support of Revision No. 2 of 2020 attached to the supplementary affidavit, applicant was aware of the decision in early December 2019 before the lapse of time. Mr Deus added that, the time between December 2019 to April 2020 is not accounted for by the applicant.

Responding to the issue whether applicant acted diligently, Mr Deus said, the claim that Mr Kaunda, applicants' former advocate acted negligently could not in any way be a sufficient reason for extension of time. He on this aspect referred the court to the decision of **Tauka** (supra). He said, Mr Kaunda was an advocate of the applicant's own choice and applicant was bound to avail his advocate with all materials facts relating to his case.

On the issue of the illegality, Mr Deus submitted that the pointed illegalities do not appear from the face of the records. He urged the court to dismiss the application with costs.

I have considered the application carefully. The law requires a person who is aggrieved by the judgment of the District Land Housing Tribunal in its original jurisdiction to appeal to this court within 45 days. The court is given power to extend that period upon good cause being shown (See Section 41(2) of the Land Disputes Courts Act). The applicant could not manage to file appeal on that prescribed period that is why he is before this court with the five explained grounds seeking for extension of time. As the law requires, in an application for extension of time, the applicant must adduce sufficient reasons for the delay demonstrating his thoroughness in pursuing the matter. To make the point clear, the Court in **Ludger Benard Nyoni V National Housing Corporation**, Civil Application No. 372/01 of 2018 (Unreported) said:

*"Condonation is not to be had merely for the asking; a full detailed and accurate account of causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to access the responsibility" (Emphasis added).*

On what constitutes sufficient cause has not been defined, each case is determined on its own circumstances, regards to be attached on the length of the delay, degree of the delay ; diligence on the party of the applicant, and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be appealed against. See for instance **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).



According to the applicant's counsel, the first reason for the delay is negligence of the applicant's advocate -Mr Paul Kaunda and on this he made references to paragraphs 5,6,7,12 and 13 of the affidavits in support of the application stressing that applicants should not be blamed for the negligence of his former counsel. I have curiously gone through the refereed paragraphs of the affidavit in respect of this point and the decision in **Zamana Ally(Mama Bushiri) V Omary Chipanta & Other** (Supra) cited by the applicants counsel. I should be quick to point out here that, the decision is distinguishable. In that case, the applicant's advocate had applied for the withdrawal of the appeal with leave to appeal without notice to his client. Having learnt the anomalies, the applicant lodged the complaint against her advocate at the Tanganyika Law society expressing her disappointment with her counsels' actions. This is not the case here. The applicant's affidavit shows that both, the applicant, and his advocate were absent when the judgement was delivered on 9/10/2019 and that they knew of the decision on 29/1/2020. Advocate Kaunda went ahead to file revision which was unfortunately struck out for being incompetent and later under his client's instructions, filed Land Application No 36 of 2020. All along, applicant was with his advocate and no sign of discomfort was registered by the applicant against his advocate. I think this complaint is an afterthought.

As rightly submitted by the respondent counsel the applicant has failed to point out the inactions by his former advocate that led to the delay. In paragraph 5 of the affidavit in support of the application for instance, the applicant himself deposed that they were not notified of the judgement date that is why they were not aware of the tribunal's decision. The rest

of the paragraphs are on the steps taken by the same advocate to rescue the situation and in all the steps, the applicant was well informed. There is nothing serious pointed suggesting the advocate's negligence amounting into a genuine ground for extension of time .

Second, is technical delay as deposed in paragraphs 11 to 16 of the applicant's affidavit. Paragraph 5 of affidavit in support of the application indicates that that the decision sought to be challenged was delivered on 9/10/2019. And that Neither the applicant nor his advocate was aware of that decision until 29/1/2020 (see paragraphs 6 and 7 of the supporting affidavit). Applicant collected the judgement and decree and the proceedings to his advocate on 31/1/2020 followed by the filing of the Land Revision No 2 of 2020 on 3/2/2020 which was subsequently struck out on 30/6/2020 for being incompetent. Applicant, deposed that, he knew of the striking out order on 17/7/2020 and in two says time Land Application No 36 of 2020 was filed. This application was again struck out at the instance of the applicant's advocate on 22/4/2021 and this application was filed just a day after that is 23/4/2021. Going by the sequency of events enumerated above, it is without doubt that the time between 29/1/2020 to 23/4/2021 falls squarely on a technical delay category of the delay as classified in the cited cases of **Fortunatus Masha vs. William Shija and Another** and **Bharya Engineering & Contracting Co. Ltd v. Hamoud Ahmed Nassor**, (Supra).

But the concern by the respondent counsel is that the applicant was aware of the trial tribunal's decision well before the expiration of the time for appealing stressing that the period between 9/10/2019 the date of the



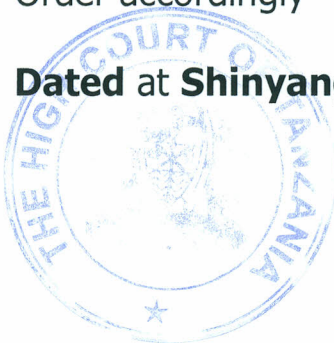
delivery of the decision by the trial tribunal and 29/1/2020 was not accounted for because according to him applicant was aware of the trial tribunal's decision in early December 2019 well within time to file appeal.

I have, as invited by the applicant's counsel in his rejoinder submissions revisited the alleged attachment to the supplementary affidavit. The said documents could not assist the court for as correctly submitted by the applicant's counsel, were never filed in court. And having no evidence antithetical to the facts deposed in the applicant's affidavit, I am convinced that applicant acted promptly and diligently from when he became aware of the decision by the trial tribunal to the date of filling this application amounting into an excusable technical delay.

I will for this reason alone allow the application. Applicant is given thirty (30) days from the date of this ruling within which to file the intended appeal. No order as to costs.

Order accordingly

**Dated at Shinyanga** this **29<sup>th</sup>** day of **APRIL** 2022



  
**E.Y. MKWIZU**  
**JUDGE**  
**29/4/2022**