

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 39 OF 2022

[C/F Land Application NO. 11 of 2020 before the District Land and Housing Tribunal
for Karatu at Karatu]

BETWEEN

PETRO GWATEEMA..... APPLICANT

VERSUS


MAGRITHA GWAATEMA..... RESPONDENT

RULING

15.08.2022 & 25.08.2022

N.R. MWASEBA, J.

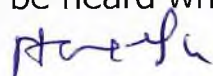
The applicant, **Petro Gwaatema** filed an application before this court under the provision of Section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 praying for an order for extension of time within which to file his Memorandum of Appeal against the judgment and Decree issued by the District Land and Housing Tribunal for Karatu at Karatu on 8th day of December, 2021.



Before this court, both parties appeared in person, unrepresented. On 21st day of June, 2022 when the matter was scheduled for hearing, this court at the request of the parties ordered the hearing of the application to be conducted by way of written submission and both sides complied with the scheduling order.

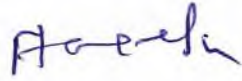
In his submission, the applicant prayed for his affidavit to form part of his submission. He further argued that immediately after the tribunal declared the respondent as a winner in land Application No. 11 of 2020 on 08.12.2021 he applied to be supplied with the copies of proceedings, judgment and decree and the same were supplied to him on 24.02 .2022. Thereafter, he started to look for legal assistance in order to file the intended appeal. As the applicant was late for two days to file his appeal, he preferred the present application. He supported his argument with the case of **Principle Secretary, Ministry of Defence and National Service Vs Devram Valambhia** [1992] TLR 185.

It was submitted further by the applicant that the decision of the tribunal is marred with illegalities as the tribunal entertained the main case without entertaining first the raised preliminary objection despite of scheduling a hearing date. That's why they want to challenge it by way of an appeal. The said acts denied the applicant his right to be heard which is fatal and



renders the entire proceeding a nullity. The case of **Eufrasia Mfugale Vs. Andrew J. Ndimbo & Another**, Civil Application No. 38/10 of 2017 (CAT- reported at Tanzlii) was cited to support their argument. More to that, the respondent had no locus to sue as she was neither an administratrix nor holder of the power of attorney, as it was held in the case of **Abdurahman Said Sinani and Another Vs. Majid Hamis**, Land Appeal No. 16 of 2014 (HC-Unreported) that only the administrator had a right to sue over a deceased's property. He prayed for the application to be granted.

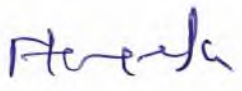
Responding to what was submitted by the applicant, she says the applicant failed to account each day of delay. The applicant was supplied with the copies of judgment, proceedings and the drawn order on 24.02.2022 and the current application was filed on 04.04.2022. It was his further submission that it is negligence to spend a month finding a lawyer and preparing the application. Her argument was supported with the case of **Benedict Kimwaga Vs Principal Secretary, Ministry of Health**, Civil Application No. 31/2000 and **Vodacom Tanzania Public Limited Company (formally Vodacom Tanzania Limited) Vs Commissioner General, Tanzania revenue Authority**, Civil Application No. 101/20 of 2021.



She submitted further that, there is no illegality on the face of record since the issue of res judicata does not exist. The said two cases are different, the parties are different too and the subject matter is not the same. The same was held in the case of **Peniel Lota Vs Gabriel Tanaki and Others** 2003] TLR 314. Further to that the changing of Hon. Chairman cannot nullify the whole proceedings as alleged by the applicant. And the issue of locus stand has no merit since the respondent claimed to be the lawful owner of the disputed property via amended application dated 3/8/2020. She prayed for the application to be dismissed with costs.


I have gone through and considered the submissions of both sides. The main issue for determination is whether the applicant adduced sufficient cause to move the court to grant the prayers sought in chamber summons.

It is a trite law that, this court has discretionary powers to grant an application for extension of time; but that discretion is judicial which has to be exercised upon showing reasonable cause.

This was well explained in the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's and Christian Association of Tanzania**, Civil Appeal No. 2 of 2010 (unreported) in which the court decided that: 

"As a matter of general principle, it is 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 arbitrarily. 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, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- 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'*

I will be guided by the above factors in deciding this application. The records herein reveal that the applicant was served with a copy of the decree on 24/02/2022 and the current application was filed before this court on 04th day of April 2022, thus counting from 24/02/2022 up to 04/04/2022 it is a total of thirty-nine (39) days and an appeal to this court from the DLHT is within 45 days from the day of the ruling or judgment is delivered. This is well provided under **Section 41 (1) and (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019 that: 

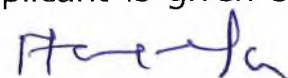
"1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(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."

Thus, being guided by the above provision, and counting from the date the applicant was served with the copy of the decree to the time he filed this application he was still within the statutory time to file his appeal. This is after excluding the time he was yet to obtain a copy of decree as stipulated under **Section 19 (2) of the Law of Limitation Act**, Cap 89 R.E 2019. Taking into consideration that the applicant obtained the decree out of the statutory time to appeal he deserves the grant of his application.

For the foregone reasons, I am satisfied that the applicant has shown sufficient cause for the delay to warrant this Court grant the application. Therefore, the application is hereby granted. The applicant is given 30



days from the date of this ruling to file his appeal. Each party to bear own costs.

It is so ordered.

DATED at **ARUSHA** this 25th day of August 2022.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE

25/08/2022