

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

MISC. LAND APPLICATION NO.73 OF 2021

(C/f Application No. 30 of 2019 at the District land and Housing Tribunal for Arusha at Arusha)

NAI MOLLEL.....APPLICANT

Vs

EMMANUEL RAFAEL.....1ST RESPONDENT

ASNAT JOEL.....2ND RESPONDENT

SONGOYO MOLLEL.....3RD RESPONDENT

RULING

Date of last Order: 3-8-2022

Date of Ruling: 22-8-2022

B.K.PHILLIP ,J

The applicant herein lodged this application under section 41(2) of the Land Disputes Courts Act and section 14(1) of the Law of Limitation Act, praying for the following orders;

- i) That this Honourable Court be pleased to extend the time for the applicant herein to file an appeal against the judgment of the District Land and housing Tribunal for Arusha in Application No.30 of 2019 out of time.
- ii) Any other relief this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant. A brief background to this application is that the applicant sued the

respondents at the District Land and Housing Tribunal for Arusha at Arusha, (Henceforth " the Land Tribunal) vide Land Application No.30 of 2019 , claiming that in the year 2017, on different dates the respondents trespassed into her land located at Lolovo area Sokoni 1 , in Arusha City. Despite being served with the summons to appear before the Land Tribunal, the respondents did not enter appearance. Consequently, the matter was heard ex-parte.

The Land Tribunal delivered its decision on 17th June 2021 in which it dismissed the applicant's claims. The applicant was aggrieved by the aforesaid decision of the Land Tribunal. She immediately requested to be supplied with the copy of the judgment and decree so as to appeal to this Court. In her affidavit in support of this application, the applicant has deposed that she was supplied with the copy of the judgment and decree on 30th June 2021 and 4th August 2021 respectively.

The applicant is unrepresented. This application has been heard ex-parte because the respondents did not enter appearance in Court despite being served with the summons to appear in Court.

In her submission in support of this application, the applicant adopted the contents of her affidavit in support of this application. Further, she told this Court that she failed to file her appeal timely because she was supplied with the copies of judgment and decree belatedly despite the fact that she requested to be supplied with the same immediately after the judgment of the Land Tribunal. She prayed this application to be granted.

It is a trite law that in an application of this nature the applicant has to account for each day of delay by giving good cause for the delay [see the case of **Hassan Bushiri vs Latifa Lukio Mashao, Civil Application No.3 of 2007** (unreported)]. Having perused the Court's records, I noted that this application was filed on 12th October 2021. It was drawn in gratis by learned advocates from Arusha Legal Aid Unit of the Legal and Human Rights Center ("LHRC") who applied for waiver of payment of Court fees under the provisions of Rule 9 of the Court fees Rules 2018 , GN.No.247 of 2018. Since the applicant has deposed that she was supplied with the copy of the decree belatedly and the same is not challenged by the respondent, I do not see any plausible reasons to disbelieve her. Thus, from the date of judgment to 4th August 2021 the applicant was waiting to be supplied with the copy of the decree. Counting from 4th August 2021, the date when the applicant alleged that she was supplied with the copy of the decree to 12th October 2021, the date of filing this application there are about 70 days which the applicant has to account for. However, as I have alluded herein above, the applicant is a lay person. She prosecuted this case at the Land Tribunal on her own. The Court's records reveal that she has filed this application through the assistance of the LHRC, Arusha . The letter for request for waiver of payment of Court fees was filed in this Court on 22nd of September 2021. Definitely, the applicant had to await for the permission to file this application without payment of Court fees.

From the foregoing, I am of a settled opinion that under the circumstances of this case, the aforesaid delay of about 70 days is explainable since the applicant had no powers to control the

preparation of this application or the process for obtaining the waiver of the Court fees. In addition, the Court's records show that the applicant has not been idle. She has been making a follow up of her case and struggling to get assistance from LHRC. It has to be noted that sufficient causes for delay are not exhaustive and each case has to be decided on its own merits. In the case of **Yusuf Same and Hawa Dada Vs Hadija Yusuf , Civil Appeal No. 1 of 2022** , (unreported) , the Court of Appeal held as follows;

".... It should be observed that the term " sufficient cause " should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step.."

Thus, on the strength of the decision of the Court of Appeal in the case of **Yusuf Same** (supra), it is the finding of this Court that the applicant has adduced sufficient cause for the delay.

In the upshot this application is allowed. The applicant is hereby granted extension of time for filing her appeal to this Court. The same has to be filed within thirty (30) from the date of this Order. Since the application was heard ex-parte I give not order as to costs.



Dated this 22nd day of August 2022


B.K.PHILLIP

JUDGE.