

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

MISC. LAND APPLICATION No. 18 OF 2021

(Arising from Land Application No. 83 of 2016 of the District Land and Housing Tribunal of Kahama)

GEORGE WILLIAM MBAKO (Administrator of
The estate of the Late William Mbako the deceased)**APPLICANT**

VERSUS

**1. MASISTA WA MTAKATIFU FRANSISCO WA
UTAWALA WA YESU KRISTO TANZANIA.....** } **RESPONDENTS**
**2. THE REGISTERED TRUSTEES OF THE
MISSIONARY SOCIETY OF ST. FRANCIS DE SALES.** }

RULING

Date: - 5th & 13th May 2022

MKWIZU, J:

The applicant George William Mbako, administrator of the estate of the late William Mbako is moving this court under section 41 (2) proviso of the Land Disputes Court Act (Cap 216 R.E 2019) for enlargement of time to appeal out of time against the decision of the DLHT in Land Application No 83 of 2016 dated 26/7/2019. It is supported by applicant's own affidavit sworn on 11th January 2021.

The application was strongly resisted by the respondent to the effect that the applicant has failed to establish good cause for the court to extend time for the applicant to lodge an appeal out of time.

The background facts of the matter as decrypted from the records are that: Applicant, in his capacity as an administrator of his fathers' estate sued the respondent at Kahama District Land and Housing Tribunal via Land Application No 83 of 2016 claiming *inter alia* that the suit land belongs to his family and that it was located to them by the Village authority. The respondent on the other hand, denied the allegation. They, like the applicant claimed to have been allocated the land by the Village council. On 26th July 2019 the Trial tribunal determined the dispute in favour of the respondents.

It seems the applicant was aggrieved with the decision, he wanted to lodge an appeal but for the reasons stated in his affidavit to this application, he failed to file his appeal within time.

On 5th May 2022 when this application came for hearing, applicant was represented by Mr. Goodluck Herman Advocate whereas Mr. Bakari Muheza Advocate appeared for the respondents.

Submitting in support of the application, Mr. Goodluck told the court that the applicant delay was caused by the delay by the court to supply him with a copy of judgment which was later received with errors necessitating another request for correction before taking any further step. He added that the correct copy was received on 15/11/2019 followed by the filling an application for extension of time No. 48 of 2019 which was struck out on 12/11/2020, hence this application.

In rebuttal, Mr Muheza said the judgment of the case in disputed was decided on 26/7/2019 and the correct copy of the decision was served upon the applicant on 15/11/2019 followed by the filing of Land Application No. 48 of 2019 on 4/12/2019, nineteen (19) days after he had obtained the correct copy of the judgement and without giving an account of the said period.

Mr Muheza elaborated further that, while the affidavit is to the effect that Application No. 48 of 2019 was struck out on 12/11/2020, this application was filed on 11/1/2021 almost 60 days in which according to him were not accounted for. Citing the case of **Bank of Africa Ltd and another Vs Marco Mihayo Chizi**, Misc. Land Appl. No. 55 of 2018, Mr Muheza stressed that applicant failed to account for each day of delay. He invited the court to dismiss the application.

In rejoinder, Mr. Goodluck reiterated that the 19 days between the time the applicant received the copy of judgment and the filing of application No. 48 of 2019, were spent time in seeking legal advice. He referred the court to paragraph 11 of the affidavit and further that the time between 12/11/2020 to 11/1/2021 were utilized in filing the matter in court through E filing.

In the instant application the pertinent issue for determination is whether the applicant has demonstrated good cause to support the application for extension of time pursuant to **section 41 (2) of the Land Disputes Courts Act Cap 216** which provides that:

*"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" (Emphasis)*

What amounts to good cause has yet to be well-defined, but the Court of Appeal has listed factors to be considered in considering a prayer for extension of time namely the degree of the delay, reasons for the delay, applicants conduct in pursuing his rights and other important factors depending on the circumstances of each case. See for instance the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported)

The only reason deposed by the applicant for the delay, is delay by the court in supplying him with the copy of the decision. It is undisputed that, the decision against which an intended appeal is sought to be lodged was delivered on 26/7/2019. It is in the applicant's affidavit, particularly paragraphs 5, 6, 7, 8, 9 to 14 that after the delivery of the judgement by the trial tribunal, he resorted into applying for the copy of the decision which was supplied to him on 7/11/2019 but with errors in his name with errors which needed to be corrected and that the correct copy was served on him on 15/11/2019. He sought for legal advice and managed to file Misc. Application No. 48 of 2019 on 4/12/2019 which was unfortunately struck out on 12/11/2021 for wrong citation of laws. From 12/11/2021, the applicant

came again before this court on 11/01/2021 with the present application, counting to 60 days delay from when the first application was struck out to the time of filling this application. As rightly submitted by Mr Muheza, this time need to be accounted for. In his efforts to detach himself from the delay, applicant counsel in rejoinder associated the sixty days delay with the E filling system intricacies. He said, they delayed in some sort on E filling processes

I have keenly considered this argument, it is nothing, but an afterthought submission brought out from the bar without any attachment with the affidavit in support of the application. Even the applicants' pleadings alleged to have delayed in the E Filling systems of the court do not support the counsel's assertion. Looking at the chamber summons, for instance, filed before this court on 11/1/2021, was signed by the party on the same day, that is 11/1/2021, and worse enough the affidavit in support thereof, was also sworn by the applicant himself on the same date, 11/1/2021 meaning that, the documents were complete for filing the same date they were filed in court.

What does this mean? The affidavit by the applicant gouged together with the submissions by his counsel are short of clarification on what was happening between 12/11/2020 to 11/1/2021 almost 60 days. It has been decided in cases without numbers that, each day of the delay must be accounted for, (see **Yazid Kassim Mbakileki v. CRDB (1996) LTD Bukoba Branch and Another**, Civil Application No. 412/04 of 2018). The conclusion here is only one, that applicant has failed to account for a period of sixty (60) days which is not ordinate to be overlooked .

As a result, the application is dismissed in its entirety with costs. Order accordingly.

Dated at Shinyanga this 13th day of May 2022


E.Y Mkwizu
JUDGE

13/5/2020

Court: Right of Appeal explained


E.Y Mkwizu
JUDGE

13/5/2020