

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPLICATION No. 21 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in
Land Application No. 46 of 2020)*

JASTINE JOSEPH

VERONICA JOSEPH

[Administrators of the estates

of the late **Joseph Nchoka Marwa**]



..... **APPLICANTS**

Versus

NORTH MARA GOLD MINES LIMITED RESPONDENT

RULING

24.08.2022 & 26.08.2022

Mtulya, J.:

A miserable story was recorded in this application on accountability of days of delay caused by a clerk of the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal), similar to a cashier of the **High Court of Tanga at Tanga** narrated thirty (30) years ago reported in the precedent of **John Chuwa v. Anthony Ciza** [1992] TLR 233. In appreciation of the narration, the following lament in screaming was recorded at the eighth and ninth paragraphs in a joint affidavit of Mr. Jastine Joseph and Veronica Joseph, as administrators of the estates of the late Joseph Nchoka Marwa (the applicants), in brief, that:

...the requesting letter was filed on the same date, 15.03.2022, but surprisingly the tribunal's clerk known by the name of Anold refused to receive and endorse the tribunal's stamp on the letter, but he orally required us to return and fetch the said order/decreed after seven days as it is being prepared...we returned at the tribunal on 22.03.2022 and we were supplied with the said copy of the decree/order, but upon perusal on the said order, we discovered that, the certification date indicated therein is the same as certification date indicated in the judgment...

This passage from the applicants' joint affidavit, was part of the contest on accountability of seven (7) days of the delay in an application for enlargement of time filed by the applicants in **Misc. Land Application No. 21 of 2022** lodged in this court on 29th March 2022 from a decision of the **District Land and Housing Tribunal for Mara** (the district tribunal) in **Land Application No. 46 of 2017** (the application) delivered on 12th November 2021.

However, after registration of materials in favour and against the present application by learned minds in Mr. Emmanuel Baraka Werema for the applicants and Mr. Imani

Mafuru for the respondent, it was vivid that the contests in the application are at three (3) reasons of the delay, namely: first, accountability on each day of the delay from when **Land Appeal Case No. 133** was struck out in this court on 15th March 2022 to the filing of the present application on 29th March 2022; second, negligence on part of the applicants' advocate; and finally, absence of Anold's affidavit on the record.

According to Mr. Werema, the applicants had previously filed an in **Land Appeal Case No. 133**, which was struck out in this court on 15th March 2022 hence they should be accountable from 15th March 2022 to 29th March 2022, when they preferred the present application. In his submission, the two weeks' delay, from 15th March 2022 to 29th March 2022, was caused by two reasons, namely: first, failure of Mr. Anold to issue the decree sought within time; and second, preparation of necessary documents for the application purposes.

In detailing his submission, Mr. Werema submitted that the first week of the delay was caused by the tribunal's clerk Anold by requiring the applicants to wait for a copy of the decree in seven (7) days and second week was reserved for preparations and drafting of necessary documents of the present application. Regarding to the second reason, Mr. Werema contended that

negligence was on part of the tribunal's clerk who initially issued incomplete documents without the decree to the applicants, and in any case during the filing of the **Land Appeal Case No. 133** in this court, as learned counsel, he took it for granted that the decree was part of the necessary documents for appeal purposes.

Mr. Werema submitted further that Anold had declined to cooperate during supplying of the decree hence it was impossible for him to swear an affidavit for explaining one week of the delay. However, Mr. Werema, was silent on necessary measures taken by him either reporting or writing to the tribunal's chairman or any other appropriate authority in dealing with Anold. Similarly, there were no any other materials on record showing dates of submitting or receiving the letter for decree purposes. Finally, Mr. Werema prayed this court to grant enlargement of time for the applicants as this court has discretionary mandate to do so, and if necessary to expunge the offending paragraphs in the applicants' joint affidavit which have produced complaints on Anold.

On his part Mr. Mfuru contended that the applicants have failed to account on every day of the delay for two levels, namely: first, from when the application ended in the tribunal on

12th November 2021 to 29th March 2022, when the present application was filed in court. In order to substantiate his submission, Mr. Mfuru cited the authority of the Court of Appeal (the Court) in **Dan O'bambe Iko** (By William Dan Iko as administrator of estates) **v. Public Service Social Security Fund & Treasury Registrar**, Civil Application No. 182 of 2005, and precedent of this court in **Hezron Hudson Winani & Another** (as joint administrators of the estates of the late Dr. Hudson Winani) **v. North Mara Gold Mine**, Misc. Civil Application No. 2 of 2022).

Replying the third reason of the application, Mr. Mafuru argued that there is settled law that an affidavit which mentions another person is hearsay unless that other person swears another affidavit. In substantiating his submission, Mr. Mfuru cited page 11 in the precedent of **Sabena Technics Dar Limited v. Michael J. Luwunzu**, Civil Application No. 451/18 of 2020, which stated that an affidavit that mentions another person, that other person must swear an affidavit. According to Mr. Mfuru, the applicants' joint affidavit mentions two other persons, one from this court and Anold in the tribunal, without attaching their affidavits in explaining the delay. In his opinion, the fourth and ninth paragraphs in the joint affidavit of the applicant which mention other two persons who caused the delay must be treated as hearsay evidence without any proof.

Mr. Mafuru submitted further that the applicants' learned counsel Mr. Werema was negligent in his duties by filing incompetent **Land Appeal Case No. 133**, which was struck out in this court on 15th March 2022 for want of prerequisite decree, and that cannot be part of the well-known *technical delay* hence cannot be a good reason for enlargement of time. In supporting his argument, Mr. Mafuru cited page 219 in the authority of the Court in **William Shija v. Fortunatus Masha** [1997] TLR 213, arguing that negligence on part of the advocate in filing wrong applications or appeals which caused the delay cannot constitute good reason for enlargement of time.

In ending his submission, Mr. Mafuru contended that the decree in the application was ready for collection purposes since 23rd November 2021 as reflected on the record of this application, but the applicants' failure to make follow ups from 23rd November 2021 has caused their delay to 15th March 2022, which is a display of mere negligence on part of the applicants or their learned counsel.

Responding to the submissions of Mr. Mafuru, Mr. Werema contended that the facts in the present application show vigilance and good faith on the applicants' part in following their dispute with the respondent as required by section 21 (1) of the

Law of Limitation Act [Cap. 89 R.E. 2019] (the Law of Limitation) and that time of following up the decree is good reason for the delay as per section 19 (2) of the Law of Limitation. According to Mr. Werema, the applicants and himself were not negligent in pursuing the matter as the applicants received incomplete documents from tribunal's clerk Anold who caused the appeal to fault and delay of the present application.

In my considered view, I think, Anold had occupied a lot of percentage in the present appeal and should have been accountable in an affidavit or his immediate boss or else any appropriate authority. Anold faulted the appeal by issuing incomplete documents for appeal purposes and delayed the applicants for seven (7) days without swearing an affidavit. Again, no any materials on record displaying the tribunal's registration book, issuing book or any written record. Similarly, there is no any complaint letter forwarded to the tribunal's chairman at Tarime or Registrar of the tribunals in Dodoma for accountability of the tribunal's clerk Anold.

This is a sad story to hear in any temple of justice, like this court. It is incomprehensible to believe that Anold is so powerful to decide the fate of parties who initiate and settle their land disputes in the tribunal at Tarime. The allegations against Anold,

which resolves this application on accountability of days of the delay and diligence, on part of the applicants or Mr. Werema, in following up the matter in good faith, was supposed to be bolstered with evidences in affidavit or any other materials pointing to Arnold's faults in causing the seven (7) days of the delay to the applicants. It is unfortunate that, there are no affidavit or materials on the subject which were registered to avoid the complaint on hearsay submitted by Mr. Mfuru.

To avoid situations like the present one, the Court has put in place since 1992, in the precedent of **John Chuwa v. Anthony Giza** (supra), a story of the cashier and what the applicants are supposed to do. The story narrated that:

*An application for leave to appeal was filed two days after time. The delay was explained. It was said that the documents for the application were filed well within time but that the receipt for the fees was issued two days out of time. The learned judge of the High Court ruled that the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry. **The delay in paying the fees was explained by saying the cashier was absent from the station and hence no receipt could be obtained although the money was paid on the date the relevant documents were submitted.** The said cashier did not file an affidavit to explain the applicant's delay. The Court of Appeal held that:*

An affidavit of a person so material, as the cashier in this case, has to be filed.

(Emphasis supplied).

The position has been intact without any disturbances or reservations whatsoever, either by this court or the Court for good thirty (30) years. There is a bundle of precedents in support of the position (see: **Suzani Rose Sanga v. Mussa Seleman Mbwana**, Civil Appeal No. 296 of 2020 and **Misungwi Shilomba v. Kanda Njile** (PC) Civil Appeal No. 13 of 2019; **Sabena Technics Dar Limited v. Michael J. Luwunzu** (supra); **Kighoma Ali Malima v. Abas Yusufu Mwingama**, Civil Application No.5 of 1987; **Benedict Kimwaga v. Principal Secretary, Ministry of Finance**, Civil Application No. 31 of 2000; **NBC Ltd v. Superdoll Trailer Manufacturing Company Ltd**, Civil Application No. 13 of 2002; and **Phantom Modern Transport (1985) Limited v. D.T. Dobie (Tanzania) Limited**, Civil Reference No. 15 of 2001 & 3 of 2002).

Ten (10) years after the judgment in the precedent of **John Chuwa v. Anthony Giza** (supra), a ruling in civil reference in the precedent of **Phantom Modern Transport (1985) Limited v. D.T. Dobie (Tanzania) Limited**, (supra) was delivered by the full Court in support of the move. Similarly, a single judge of the Court is bound by the precedent of the full Court as displayed in

the decision of **Benedict Kimwaga v. Principal Secretary, Ministry of Finance** (supra), where it was stated at page 4 of the Ruling that:

...I am fully aware of the decision of the full court in Kighoma Malima's election petition that if an affidavit mentions another person, then that other person has to swear an affidavit. However, I would add, that is so where the information of that other person is material evidence because without the other affidavit it would be hearsay. Where the information is unnecessary, or where it can be expunged, then there is no need to have the other affidavit.

(Emphasis supplied).

This is the position of the law as directed by our superior court of the land, the Court. I am quietly aware that Mr. Werema prayed this court to expunge fourth and eighth paragraphs of the applicants' joint affidavit or disregard the hearsay evidence as per decision in **Benedict Kimwaga v. Principal Secretary, Ministry of Finance** (supra); **Phantom Modern Transport (1985) Limited v. D.T. Dobie (Tanzania) Limited** (supra); and **Uganda v. Commissioner of Prisons, Ex-Parte Matovu** [1966] E.A 514.

However, Mr. Werema had forgotten the important clause in the cited precedents on information that contains a substance of the case.

In the present application, apart from the other two (2) reasons of the delay, which I will not be considerably detained, the real contest is on accountability of days from the decision of this court in **Land Appeal Case No. 133** on 15th March 2022 to the filing of the present application 29th March 2022. I am wondering whether after expunge of the cited paragraphs, what other relevant materials that will persuade this court in deciding in favour of the applicants. Again, I recall during proceedings, Mr. Werema prayed this court to decide the matter as it so wish, by inviting its discretionary mandate.

I am well conversant that enlargement of time is one of the powers within the discretion mandate of this court (see: **Samwel Sichone v. Bulebe Hamis**, Civil Application No. 8 of 2015 and **Oswald Masatu Mwizarubi v. Tanzania Processing Ltd**, Civil Application No. 13 of 2010). However, the mandate has to be exercised judiciously depending on relevant materials registered by the parties (see: **Alliance Insurance Corporation Ltd v. Arusha Art Ltd**, Civil Application No. 33 of 2015; **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008; **Sebastian Ndaula v. Grace**

Rwamafa, Civil Application No. 4 of 2014; and **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2009).

In the present application, three (3) reasons of the delay were registered. It is fortunate that all the registered materials have settled and certain precedents. The first reason on the first seven (7) days delay after decision of this court in **Land Appeal Case No. 133** on 15th March 2022 to 22nd March 2022 was attributed to Anold without affidavit or any other relevant evidence to show accountability of Anold, promptness, diligence or good faith in following the decree at the tribunal. On accountability of the other seven (7) days of the delay on preparation of documents, from 22nd March to 29th March 2022, the law is very certain.

The applicants or Mr. Werema were supposed to specifically account on every day of the delay, and not generally stating on the seven (7) days of the delay (see: **Dan O'bambe Iko** (By William Dan Iko as administrator of estates) **v. Public Service Social Security Fund & Treasury Registrar** (supra); **Hezron Hudson Winani & Another** (as joint administrators of the estates of the late Dr. Hudson Winani) **v. North Mara Gold Mine** (supra); and **Lyamuya Construction Company Ltd v. Board of Registered**

Trustees of Young Women's Christian Association of Tanzania,
Civil Application No. 2 of 2010.

In the precedent of **Hezron Hudson Winani & Another** (as joint administrators of the estates of the late Dr. Hudson Winani) **v. North Mara Gold Mine** (supra), at page 8 of the Ruling, this court stated that:

*...I am equally aware that Mr. Motete submitted that the six (6) days of the delay in drafting necessary documents to file an application were reasonable. However, **the directives of the Court of Appeal is to account on every day of the delay, which is not reflected anywhere in the record of the present application. In Dephne Perry v. Murray Alexander Carson [1963] E.A 546, the applicant was late for only five days when he applied for extension of time, but the Court of Appeal for East Africa refused to grant the extension of time, despite the fact that the Court thought that the appeal had merit.***

(Emphasis supplied).

In the present application, both the applicants and Mr. Werema did not act very expeditiously to display vigilance and good faith as per requirement of the law in the precedent of the

Court in **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008. The Court's directives is to avoid unnecessary gaps in pursuing disputes in our courts, especially those related to enlargement of time (see: **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014)


The facts registered in the record of present application clearly shows what was stated in the precedent of the Court in **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) on inordinate, apathy, negligence or sloppiness in the prosecuting action that applicants are intending to take. In the wording of the Court, that is a sheer negligence of the advocate, which has often times been held not to be sufficient reason to extend time (see: **Transport Equipment Ltd v. D.P Valambhia** [1993] TLR 91 and **William Shija v. Fortunatus Masha** (supra).

Having said so, and considering the above indicated reasons, I have decided to decline to grant enlargement of time to the applicants. They failed to persuade this court to exercise its discretionary mandate to decide in favour of the application. I am aware the parties have incurred costs in prosecuting the dispute, but this court has a practice of declining costs in circumstances where administrators of the deceased estates are

busy searching for the rights of the deceased persons (see: **Hezron Hudson Winani & Another** (as joint administrators of the estates of the late Dr. Hudson Winani) **v. North Mara Gold Mine** (supra). Each party shall bear its own costs.

Ordered accordingly.




F. H. Mtulya

Judge

26.08.2022

This ruling was delivered in chambers under the seal of this court in the presence of the second applicant, Veronica Joseph and in the presence of the respondent's learned counsel Mr. Imani Mfuru, and in the presence of Mr. Emmanuel Baraka Werema, learned counsel for the applicants, through teleconference attached in this court at Bweri area in Musoma.


F. H. Mtulya

Judge

26.08.2022