

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION No 28 OF 2019

MATHIAS N. MAGINA.....APPLICANT

Versus

ELIAS JO SEPH HURUMA.....1ST RESPONDENT

YOHANA CHISWAKAYA.....2ND RESPONDENT

SECELELA LEJETO.....3RD RESPONDENT

ABASSI SALUM.....4TH REDPONDENT

BAKARI MGAILA.....5TH RESPONDENT

RULING

14/12/2021 & 12/8/2022

LALTAIKA, J.

The applicant herein **MATHIAS N. MAGINA** has filed the instant application for extension of time within which he can appeal to this court against the decision of the District Land and Housing Tribunal of Kibaha. The application is supported by the affidavit setting reasons for granting the orders sought.

A brief history of this application can be drawn from the applicant's affidavit that, he filed a land Application No.27/2014 against the respondents before the District Land and Housing Tribunal for Kibaha at Kibaha (DLHT). The applicant was claiming to be the lawful owner of the

suit premises measured 5 acres located at Amani Suburb, Kerege Ward, Bagamoyo District, Coast Region. The tribunal after having heard both parties issued judgment and Decree where the respondents were declared the lawful owner of the suit premises. The applicant was condemned to vacate the suit premises and pay general damages of TZS 30,000,000 to the respondents.

Aggrieved with the decision of the tribunal the applicant requested to be supplied with the copies of proceedings, judgment and decree for appealing purposes. On 25 July 2017 he was supplied with the copies although the time to appeal was already elapsed. As a result, the applicant filed a Miscellaneous Land Application No.757 of 2017 in the High court of Tanzania Land Division at Dar es salaam seeking enlargement of time to file an appeal to the high court but the filed application was struck out on 30th October 2018 by the high court for being incompetent.

On 2nd November 2018 the applicant became sick so he failed to file an application for extension of time to appeal out of time after the former application was struck out on technicalities. The appellant Mr. Mathias N. Mgina has, once again, knocked the doors of this Court by filing an application for extension of time to institute the instant application seeking for extension of time to appeal against the decision of the DLHT. The 2nd and 4th respondents have filed a counter-affidavit opposing the prayer.

This application was by way of written submission whereby, the applicant enjoyed the service of Mr. Leonard T. Manyama advocate while the 1st, 2nd and 4th respondents enjoyed the service of Mr. Adrian Mhina, Advocate. Mr. Manyama when submitting in support of the application stated that, the applicant is praying for an order for extension of time to

file an appeal out of time. The reasons for the delay are; **first** the judgment and decree were supplied to him when the time to appeal had already elapsed. The judgment was issued on 25/04/2017, he orally made a request the same date but he was supplied on 25/07/2017. The applicant invited this court to section 19(2) of the law of limitation Act, Cap 89 R.E 2019) and averred further that, the time requisite for obtaining copies of judgment and decree is excluded in computing time limit for one to take any legal measure in a court of law. The **Second** reason is the striking out on technical ground of the first Misc. Land Application No.757/2017 on 30/10/2018 for extension of time. **Third** the applicant was sick suffering from Stroke which caused him to be excluded from any duty from 2nd November ,2018 to 1st May 2019 thus 2nd May 2019 he filed this application.

The applicant submitted further that the reasons are sufficient to warrant extension of time as the applicant has acted diligently without negligence and in fact, he failed to appeal due to the reasons beyond his control. To bolster his argument, he cited the case of **Michael Lessan Kweka Versus John Eliafye** [1997] TLR 152. He also invited this court to **section 41(2) of the Land Disputes Courts Act (216 R.E 2019)**.

In reply, the 2nd and 4th respondents jointly submitted that they first pray for the court to adopt their joint counter affidavit sworn by their advocate to be part of their submission. The respondents referred to section 41(2) of the Land Disputes Courts Act (Supra) which provides for 45 days after the date of the decision for an appeal to be lodged. Noting that the High Court may, for good cause, extend the time for filing an appeal, the respondents invited this court to the **Black's Law Dictionary** Revised 4th Edition, St. Paul, Min, West Publishing Co,1968-page number

822, where a good cause had been defined as "Substantial reason, one that affords a legal excuse." They wondered whether the applicant had established a substantial reason, one that affords a legal excuse.

On the third reasons for the delay, the 4th respondent submitted that he was supplied with the copies on 17th July 2017 while the applicant alleged that the copies were ready for collection on 25th July 2017. Furthermore the 4th respondent contended that the applicant's allegation that, he orally made a request on 25/04/2017 had no prove. In his view the fact that the respondent was able to collect his copies earlier than the applicant was indicative of lack of diligence and argued the same to be construed for advantage to the respondent. To support his argument, he cited the case of **Evard Mtungilwege & Another Versus Magreth Veronica Chekani**. Misc. Land Application No.104 of 2013.

Moreover, the 2nd and 4th respondents submitted that the procedure to appeal from District Land and Housing Tribunal had been provided at section 41(1) of the Land Disputes Courts Act (supra) adding that there was nowhere in the said provision where it was stated that copies of judgment and decree shall be attached.

The respondents arguing on the provision cited by the applicant which is section 19(2) of the Laws of Limitation Act, Cap 89 R.E 2019, the respondents in opposing he cited section 43 Of the laws of Limitation Act, Cap 89 R.E 2019, which provides that the Law of Limitation Act shall not apply to any proceedings for which a period of limitation is prescribed by any other written law save for the extent provided for in section 46.

Arguing on the second reason that Misc. Land Application No. 757/2017 was struck out on technical ground, the respondents submitted that the formal application was struck out due to negligence on the applicant's side for failure by the attesting officer to indicate in the jurat of attestation which person had introduced the deponent to him. It is the respondent's submission further that negligence of a party to a case cannot be an excuse for granting extension of time to lodge an appeal out of time.

On the third reason that the applicant was sick as supported by annexure MM5 which shows it was signed on 7th May 2019 while other supporting documents under annexure MM4 was dated around 2018, the respondents submitted that there is no any proof for the applicant's illness from 01st November 2019 up to 1st May 2020 as alleged. They, argued that this argument had no supporting documents and should not be considered.

The 1st respondents, although he was not a part of the 2nd and 4th respondents' joint submission, indicated his total approval to what was submitted by his co respondents.

Having dispassionately considered the rival submissions by both sides, it is upon me to decide whether the application has merit specifically whether the applicant has adduced good cause for the delay.

It is trite law that a person applying for extension of time must exhibit sufficient cause for the delay. See **Mumello v. Bank of Tanzania** [2006] E.A. 227, where the Court of Appeal held that:

"...an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause".

The Court of Appeal of Tanzania in several of its decisions has repeatedly held that;

"In determining if good cause has been disclosed, the court has consistently taken into account considerations such as:-

- i) The cause of delay*
- ii) The length of the delay,*
- iii) The conduct of the parties,*
- iv) The degree of prejudice if any that each party suffers depending on how the court exercises its discretion,*
- v) The need to balance the interest of a party who has constitutionally underpinned right of appeal, and*
- vi) Whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged".*

See the case of Mohamed **Suleman Ghona Vs. Mahmoud Mwemus Chotikungu**, Civil Application No. 179/01/2020 CAT - DSM, **Henry Muyaga v. Tanzania Telecommunication Company Ltd**, Civil Application No.8 of 2011, cited the case of **Henry Leonard Maeda and another v. Ms. John Anael Mongi**, Civil Application No.31 of 2014, the court

In this case the applicant's reasons for delay are; **one**, the copies of judgement and decree were supplied to him late, **second** the striking out of his first application due to technicalities and **third** that he became sick soon after the court had struck out his application. He supported his averment with documents marked MM-1, MM-2, MM-3, MM-4 and MM-5. The respondents' advocate disputed these reasons for having no proof.

I am inclined to analyse the reasons advanced and weigh them out to find out whether they amount to good cause. Starting with the first reason, the applicant asserts he was supplied with the copies of judgement and decree late. According to paragraph 5 of his affidavit, the judgement of the Tribunal was delivered on the 25th April 2017. On the same date he orally requested to be supplied with copies for purposes of preparing his appeal. It was not until 25th July 2017 that he was supplied with the same. I have tried to look for any proof that he had made follow up before and could not be provided with the requested copies which I assume had been uploaded online and hard copies waiting for collection as it is supposed to be done in our courts of record. Since there is no proof that the applicant had made efforts to get the copies as soon as possible this court finds no merit to this reason.

This brings me to the second reason that his former application was struck out due to technicalities. Having gone through the ruling of this court delivered on the 30th October 2018 (Hon. A. Mohamed, J.) it is evidenced that the reason for the striking out was failure of the attesting officer to indicate in the jurat of attestation which person had introduced the deponent to him. It goes without saying that the applicant's lack of diligence is not a sufficient reason to grant extension of time. See the Court of Appeal holding in **Dar es Salaam City Council v. Jayantilal P. Rajani** - CAT Civil Application No. 27 of 1987. I do not see merit in this reason either.

The last reason is that the applicant was very sick. The applicant had submitted that on 2nd November, 2018 he became very sick. He was rushed to Lugalo General Military Hospital where it was discovered that he had a partial paralysis commonly referred to as stroke. To prove this,

he attached the what he called medical report (Annexure MM-4) to his application. In addition to finding it very difficult to recognize the document as a proper medical report, the applicant's reason that he was sick is equally doubtful because he had submitted that his Exclusion from Duty (commonly referred to by its acronym ED) was ordered to run from 2nd November 2018 to 1st May 2019. A proof of this allegation is the annexure MM-5 as indicated in his affidavit. Going through the said evidence the court finds a different thing. According to annexure MM-5 it is on the ED was ordered on 2nd May 2019 and not on 2nd November 2018. This reason does not add up.

All said and done, the applicant has not adduced sufficient reasons to move this court to grant the application for extension of time. Therefore, I find no other option but to dismiss it. I make no order as to costs.

It is so ordered.



E.I. LALTAIKA

**JUDGE
12/8/2022**