

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA  
AT MBEYA**

**MISC. LAND APPLICATION NO. 113 OF 2021**

(Originating from the District Land and Housing Tribunal for Mbeya at Mbeya  
in Application No. 115 of 2017)

**FLORA AMON MWAIPAJA.....APPLICANT**

**VERSUS**

**1. MAGRETH TIMOTH NYIGU RESPONDENT**

**2. JOSEPH TIMOTH NYIGU**

**3. ASINA STEPHANO NYIGU**

**4. MCHINGA AUCTION MART & REAL AGENCY CO. LTD**

**5. TANZANIA POSTAL BANK**

**.....RESPONDENTS**

**RULING**

*Date of last Order: 05.07.2022*

*Date of Ruling: 26.08.2022*

**Ebrahim, J.**

The instant application is made under section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019. The applicant FLORA AMON MWAIPAJA instituted the instant application seeking for an extension of time to file a memorandum of appeal out of time. The application was supported by the affidavits sworn by the applicant and Mr. Daniel Muya, learned advocate.

Brief facts of the case are that; upon the death of Timothy George Nyigu, Asina Stephano Nyigu (3<sup>rd</sup> respondent) was appointed the administratrix of his estates. A house located at Itongo street, Mwakibete area in Mbeya City (the suit property) was one of deceased's the estates. Asina by virtue of her office of administration caused the suit property to be registered in her name. Consequently, she obtained a loan from Tanzania Postal Bank (5<sup>th</sup> respondent) and the said property was mortgaged. She defaulted to repay the loan. The 5<sup>th</sup> respondent engaged the 4<sup>th</sup> respondent to sell the mortgaged property. The applicant successfully purchased the same. After becoming aware of the sale, the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed land application to the DLHT praying for an order to nullify the sale on the account that they were not engaged as beneficiaries at the time of obtaining the loan.

Having heard the evidence of the parties the DLHT decided in favour of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and nullified the sale. Aggrieved, the applicant wants to challenge the decision if granted extension of time to appeal out of time.

The application was heard by way of written submissions. The applicant was represented by advocate Daniel Lawrence Muya, who duly filed his submissions. On the other hand the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents appeared in court but did not protest the application; whereas, the 4<sup>th</sup> and 5<sup>th</sup> respondent neither entered appearance nor protested it.

Submitting in support of the application, Mr. Muya prayed to adopt the two affidavits. The affidavits essentially deponed that the delay was not deliberate as the applicant timely applied for the copies of judgment and decree and made different follow up since 2020 to 2021 in vain. That the copies were ready for collection in April 2021 but the applicant was not informed till when he made physical follow up in June, 2021. The affidavit further deponed that they aridly filed the appeal electronically and paid court fee. The status at JSDS showed that the appeal was submitted but they did not get reply from the Depute Registrar so as to file the appeal physically. After a passage of time and worried to be out of time to file physical documents, they filed this application.

According to Mr. Muya the advanced reasons are sufficient reason for the court to grant extension of time. The reason he gave on that account was that the delay was ordained as the applicant has never rested to make a follow up and they delayed to be supplied with the copies of judgment and proceedings as well as the delay to get feedback from JSDS system.

Having considered the affidavit by the applicant and her counsel. The issue before this court is whether the applicant has adduced sufficient cause for her delay. It is trite law that extension of time is granted discretionary and upon the applicant demonstrating sufficient reasons for the delay. Sufficient reasons depend on the circumstance of each case. However, factors like, the length of delay involved, the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercise its discretion; and the conduct of the parties can be the guidance in granting extension of time; see the case of **Airtel Tanzania Limited vs Misterlight Electrical Installation & Another**, Civil Application No. 31/01 of 2020 CAT at Dar es Salaam (unreported).

In the instant application, considering the fact that the application was not challenged; and also considering the

conduct of the applicant and her counsel; it shows the high level of diligence. For example, they wrote a letter requesting copies of judgment, proceedings and decree on 04.06.2020, the same date the impugned judgment was delivered. It was followed by the reminding letters which were written to the DLHT which stands for another indication of diligence.

Not only that, but also the applicant and her counsel filed the appeal electronically on 13.07.2021 and remained waiting for directives in vain. Like it was not enough they wrote a letter to the Depute Registrar requesting for directives on the electronic filed appeal on 10.12.2021. Finally, on 27.12. 2021, they filed the instant application.

In the circumstance, I am being guided by the principle held in case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) that in considering to grant the extension of time, the delay should not be inordinate, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

That being the case therefore, as per the reasons given above, the applicant has never slept over her right. Her conduct and the follow ups made are sufficient reasons for this court to grant the application. Consequently, I grant the application. The applicant shall file her appeal within 45 days from the date of this ruling.

Accordingly ordered.



  
**R.A. Ebrahim**  
**JUDGE**