

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND CASE APPLICATION No. 25 of 2021

MENG'ORU MATAYAN.....APPLICANT

VERSUS

JULIUS LENGONG.....RESPONDENT

RULING

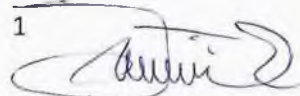
20th July & 09th September 2022

TIGANGA, J

In this application, the applicant moved the court under section 38(1) of the Land Disputes Courts Act, [Cap 216 R. E 2019] and section 14 of the law of Limitation Act, [Cap 89 R.E 2019]. The application was filed by chamber summons which was supported by the affidavit sworn by the applicant. His prayers in the chamber summons are as follows;

- i. That, this Honourable Tribunal be pleased to grant an order for the extension of time to file petition of appeal out of time.
- ii. Any other orders this Honourable court shall deem fit to grant

The application was opposed by the respondent who filed the counter affidavit in which he disputed all the allegation posed to justify extension of time. The affidavit and the submissions in chief filed in support of the

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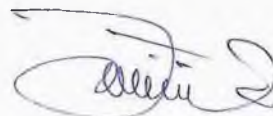
application, put forth both the historical background of the application and the reasons for the application as follows. Parties were applicant and respondent respectively before Murieta Ward Tribunal in land complaint No. 02 of 2020 where the applicant lost. Following that defeat, he appealed to the District Land and Housing Tribunal for Arusha where he also lost. The judgement of the District Land and Housing Tribunal was delivered on 10th December 2020 in favour of the respondent. He stated that, he has never slept on his right, the applicant requested for the copies of the decision but he was not supplied due to the fact that, the one responsible for issuing such copies was out of the office for leave till 15th February 2021 when he came back.

He further submitted and stated in the affidavit that, on the 16th February 2021 before he visited the Legal and Human Rights Center for legal assistance he was informed that, his mother was in critically ill and was hospitalized at St. Elizabeth Hospital. According to him, he was supposed to be nursing and assisting her, but unfortunately the applicant's mother who was sick passed away on the 02nd March 2021 and after the burial and all other rituals were completed he filed this application in court.

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The applicant further stated that, his delay to file his appeal in time was technical, which was caused by the failure of the District Land and Housing Tribunal to supply him the copies of documents necessary for appeal purpose. In his further submission, he submitted that, he acted reasonably following the delivery of the decision by the District Land and Housing Tribunal by requesting the copies of the decision but the failure of the responsible person to supply him with such copies contributed much to his delay. In support of his arguments, he relied on the authority in the case of **Mohamed Hussein vs Lucian Daud Mnyagatwa**, Civil Application No. 285/17 of 2020, CAT at Dar es salaam (unreported) and **Fortunatus Masha vs William Shija and Another** [1997] TLR 154 in which it was emphatically held that, technical delay when proved is a reasonable ground for extension of time.

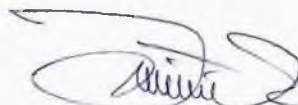
He further submitted that, since there is no clear definition as to what amounts to the sufficient ground for the extension of time, he is of the view that, his adduced ground which justifies technical delay requires consideration. Since it was out of his control, he had no powers to enforce the matter in the District Land and Housing Tribunal's administration.

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He concluded his submissions by stating that, the applicant has never been negligent, he has also never slept over his right, he insisted to have acted diligently and prompt in fighting for his right and therefore the court should find it reasonable to allow him to demonstrate his ground of appeal by granting him the chance to file an appeal.

The application was opposed by the respondent who filed the counter affidavit in which he disputed all the facts deposed by the applicant. He also made a reply submission in response to the submission in chief in which he stated that, the two reasons advanced by the applicant reasons for the delay, that is, failure to secure necessary documents on time He submitted that, the applicant has not acted reasonably as he has not submitted any evidence to prove that after he requested for copies of the proceedings and decision, there is any reminder made by him requesting the same as a follow up action.

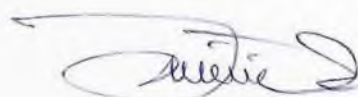
He further submitted that, the reason that the persons responsible for typing the copies of proceedings and judgments were on leave is left unjustified because computing from when was delivered up to hen the documents was supplied is arithmetically a delay of 65 days which is quite unconvincing to believe that, staffs of in the District Land and Housing

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Tribunal can be on leave for 65 days. He submitted further that, even under employment law, such 65 days' leave is unknown and legally unjustifiable.

If we are to believe that the said staff was on leave for all that time and she was the only person responsible then, the business of the District Land and Housing Tribunal became ineffective for the whole period of the 65 days'. He further stated that, in the absence of the letter for requesting the copies from the Tribunal, it goes without saying that the applicant's allegations are not supported by evidence to backup the same and do not account for the whole period of the delay.

Regarding other ground that, the applicant delayed to file his appeal because he has been taking care of his sick mother who later died on the 02nd March 2021, the respondent's Counsel submitted that, there is nowhere the name of the applicant's Mother has been stated in the applicant's affidavit. The Counsel further submitted that, annexure "X2" collectively which is the copy of the medical report showing different admission forms from different hospital at diverse dates. The first form marked X is St. Elizabeth Hospital Investigation form dated 08th June 2020 after he has been admitted on 05th June 2020 and discharged on 11th June 2020, the Selian Lutheran Hospital Patient Discharge form dated 16th December 2019, St.

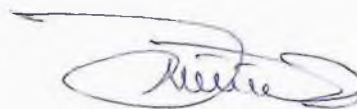


Elizabeth Hospital discharge form dated on the 08th October 2019. All the forms mentioned bear the name of the Patient named Martha Mathayo Mollel, who is not mentioned in the affidavit.

He further stated that, after his Mother's death the applicant spent the other 13 days which are also left uncounted, the application for the enlargement of time to appeal was filed on the 29th March 2021. It is his further submission that the applicant has failed to account for more than 90 days within which he failed to file his appeal.

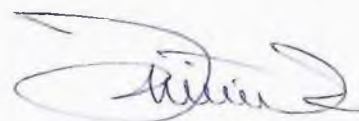
He concluded his submission by stating that, the applicant has failed to act in line with the established guidelines in the case authority of **Lyamuya Contruction Co. Ltd vs Registered Trustees of Young Women Christian Association** Civil Application No. 02 of 2010, which gives the guidelines as follows, *firstly*, that the applicant must account for the whole period of delay, *secondly*, that the delay should not be inordinate, *thirdly*, that the applicant must show diligence, not apathy, negligence, sloppiness in the prosecution of the action that he intended to take.

That being a summary of the evidence in the affidavit and the argument in the submission, I find the main issue for determination is whether this

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application constitutes good causes for the grant of time enlargement to file an appeal? I have passed through both Parties' submissions, the main prayer in in this application is for the enlargement to file an appeal out of time. application if time enlargement to file an appeal out of time, the grounds raised by the applicant for such extension of time are two, **one**, being technical delay by the tribunal's failure to supply necessary documents on time and **two**, being the sickness of the applicant's mother which resulted into her death.

The deliberation of this matter will commence on the first ground of technical delay. From the arguments, the alleged technical delay was based on the fact that the typist responsible for preparation of the copies of the proceedings and judgment was on leave that even upon follow up, the applicant could not be supplied with the necessary document for appeal. It is upon records that the decision by the District Land and Housing Tribunal was delivered on the 10th of December 2020, it is also upon the applicant's submission at para 5 of his affidavit that the said leave of the Tribunal's Typist ended on the 15th February 2021. Arithmetically while counting the number of days from the 10th December 2020 to 15th February 2021 the total

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number of days the Typist is said to have been on leave is 67 days which equals to 2 months and 1 week.

Legally the normal annual leave for the Public Servants is 28 days which is a one month leave period. The alleged 67 days' leave by the applicant is legally unjustifiable and the applicant has not substantiated that fact. Assuming the Typist was on leave for the whole period of 67 days, it goes without saying that the District Land and Housing Tribunal businesses stopped or was suspended for two months and one week the, period the Typist was on leave, the fact which the, applicant cannot justify too.

It is common ground too that, from the fact in the affidavit and the submission filed in support of the application, the said typist or secretary or responsible person of the tribunal who was to make sure that, the record are prepared and supplied to the parties, seems to be the sterling this movie. Being the sterling, one would expect to have his or her affidavit to support the affidavit of the applicant to have been filed which was not. This in line with the authority in the case of **Airtel Tanzania Limited vrs Mister Light Electrical Installation Co. Limited and Anold Mulashani**, Civil Appeal No. 31/02 of 2020 in which the court of Appeal cited with approval the case



of Isack Sebbegele vs Tanzania Portland Cement, Civil Application No. 25 of 2002 CAT- had this to say;

"The evidence in support of the applicants claim against court clerk was necessary, the names of the said clerk should be indicated in one of the paragraph of the affidavit and that was supposed to be attached with the affidavit sworn by the said court clerk."

Likewise, in this case the affidavit by the court clerk or any staff of the tribunal was necessary to justify the allegation of the applicant regarding the absence of the responsible staff for the period stipulated about failure to be served necessary documents for purpose of appeal.

Failure to have one makes the applicant to be required to account all days of delay. The delay therefore is not technical as alleged by the applicant. In the case of **Modestus Daudi Kangalawe vs Dominicus Utenga**, Civil Application No. 139 of 2020, the Court of Appeal of Tanzania held that;

"The delay was not technical since it was a settled principle that negligence and ignorance of law have never been sufficient or good causes for extension of time."



In the absence of the affidavit sworn by one of the officer from the tribunal, there cannot be any justification for the applicant to be believed. That being the case, this ground fails as it is deficient of merit.

With regards to the second ground raised by the applicant that, his mother was sick and the applicant had to take care of her from 16th February 2021 and was admitted to St Elizabeth Hospital. As it was submitted by the Counsel for the respondent, there are three different dates presented by the applicant showing both, admission and discharge of her late mother in different hospitals. It is upon the applicant's submission that, her mother was admitted at St Elizabeth Hospital on the 05th June 2020 and was discharged on the 11th June 2020, he also submitted that, his mother was admitted at Selian Hospital on the 11th December 2019 and was discharged on the 16th December 2019 and on the 08th October 2019 she was admitted to another Hospital and was discharged on the 10th October 2019.

In my view, this last admission and discharge does not indicate the health center or hospital where his deceased mother was attended. From his submission, all the dates on both admission and discharge are out of the range of the period within which the applicant was supposed to file his appeal. In short, the dates he has submitted prove nothing with regards to

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the period of his delay to appeal. The latest date of admission and discharge of the said patient was on 05th June 2020 and 11th June 2020 respectively. The decision by the District Land and Housing Tribunal which was to be appealed against was delivered on 10th December 2020 almost six months after the last discharge of the patient, which is long before the right to appeal had accrued. From the foregoing discussion, this ground holds no water in accounting for the applicant's delay, it also fails to stand as a good cause for the extension of time.

That said, what has been observed by this court is the lack of seriousness and diligence as well as acting negligently which resulted into the applicant's delay. Therefore, the application suffers deficiency of good causes for the extension of time to be granted. It consequently fails and is hereby dismissed with costs for the reasons given herein above.

It is accordingly ordered.

DATED at ARUSHA on the 09th day of September 2022.



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J.C. TIGANGA

JUDGE.