

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC LAND APPLICATION No. 70 OF 2022**

*(Originating from Muriyet Ward Tribunal in Land Application No. 157 of 2018 and Land Appeal Case No. 93/2018 from the District Land and Housing Tribunal for Arusha, Land Application No. 51/2020)*

**FAUSTA JULIUS.....APPLICANT**

**VRS**

**MAGDALENA RAYMOND.....RESPONDENT**

**RULING**

22<sup>nd</sup> August & 20<sup>th</sup> September 2022

**TIGANGA, J.**

The applicant herein applies for time enlargement to file his appeal to challenge the decision of the District Land and Housing Tribunal for Arusha, at Arusha in Land Appeal No. 93 of 2018 and Land Application No. 51 of 2020. He moved this court by way of chamber summons supported with an affidavit sworn by the applicant, she applied under section 14 of the Law of Limitation Act, [Cap 89 R.E 2019] and any other provision of the law for the time being in force. Apart from extension of time, he has also prayed for



costs of this application and other reliefs this Honourable Court deems fit to grant.

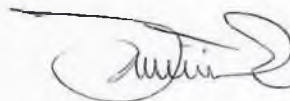
A brief background of the matter is that, parties had a land dispute before the District Land and Housing Tribunal, the land in dispute measures 2 acres and it is located in the eastern part of Muriyeti ward within Arusha city. The boundaries of the said suit in dispute are as follows, at the north the suit land is bounded with the plot of Sominyoni, the southern part bounded with land of Naang'e, the Western part bounded with the land of Julius A. Molel likewise the eastern part. The applicant claimed that, the land in dispute belongs to her and her late husband, and she has been using the said land since 1996.

The essence of the matter being the act of trespass committed by the respondent into the said land and planted maize seeds while the farm was already cultivated by the applicant ready for planting her intended crops. The tribunal's decision was that the applicant has failed to prove on the balance of probabilities that, she is the owner of the suit land.

Parties argued this application by way of oral submissions. The submission in chief commenced in which the applicant submitted that, the

decision against which the appeal is intended was delivered on the 22<sup>nd</sup> March 2022 and the appeal was filed on the 22<sup>nd</sup> April 2022. He further submitted that, the appeal was mistakenly filed to and received by the District Land and Housing Tribunal for Arusha, at Arusha, on the 22<sup>nd</sup> April 2022 and the filing fees being paid to that registry. He further submitted that, later the Chairman for the District Land and Housing Tribunal for Arusha, at Arusha discharged the copy of appeal ordering that the case should be filed to the High Court through High Court website.

The Counsel for the applicant further submitted that, seven days after the filing of the said petition of appeal, the secretary of the tribunal called the applicant and informed her that, his petition was wrongly lodged before the District Land and Housing Tribunal registry. At the moment the applicant was informed he was already late to file the appeal to the High Court. The Counsel further stated that, the applicant consulted the Advocate on the 08<sup>th</sup> June 2022 and asked him for the service of filing the petition of appeal. He concluded his submission by praying before this court to enlarge time for filing petition of appeal since the reason for the delay was a technical one and the applicant has nothing to do on it.

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In the reply submission, the Counsel for the respondent submitted that, in original dispute No. 51 of 2020 the matter was heard ex parte and the applicant enjoyed the service of an Advocate, hence the argument that she did not know where to file her appeal has no basis. He further argued that, the applicant's argument holds no water since she has no tangible evidence to prove that she filed the appeal in wrong registry at the District Land and Housing Tribunal.

In his further submission, the Counsel for the respondent stated that, the fact that she was told by the clerk of the tribunal that, she filed the appeal in a wrong registry at the tribunal was to be adduced in her affidavit and an attachment of the Clerk's affidavit stating the same was necessary as a matter of practice, he emphasized this position by citing the case of **Airtel Tanzania Ltd vs Light Electrical Installation Co. Ltd and Arnold Mulashani, Civil Application No. 37/01 of 2020 CAT- Dar es salaam** (unreported), which insisted on the need for an affidavit of the person mentioned in the applicant's affidavit to have done something that, the applicant relies upon as among the facts in his application.

It is his further submission that, the applicant's delay is of 16 days which I think he should account them all. There is also no proof that the



applicant has filed the appeal before the District Land and Housing Tribunal registry, the applicant is ought to have shown the receipt following the filing of an appeal as she has stated. He further submitted that, it is the duty of the Applicant also to prove that she acted diligently but not negligently on his part so as to substantiate the ground of technical delay she has raised.

In rejoinder submissions, the Counsel for the applicant submitted that, they reiterate their submissions in chief and he insisted that, the matter which caused the delay was beyond the applicant's control. He concluded the rejoinder by praying the court the costs be paid by the respondent and other orders the court will deem proper to grant.

Gathering from the application, the affidavit and counter affidavit filed by both parties as well as submissions, the issue for consideration and decision before this court is whether the applicant's application contains good causes for the extension of time to appeal out of time?

In deliberation of the Parties' submissions, this court found it crucial to point out that, although the applications for extension of time as a general rule are made under the Law of Limitation Act (supra) there is a specific law governing applicatios , that is the Law of Limitation Act, (supra), there is



specific law governing application for extension of time and appeals in land cases originating from the District Land and Housing Tribunal, that is section 41(2) of the Land Disputes Courts Act [Cap. 216 R.E 2019]. Therefore, in this matter I will be guided by both, the general Law section 14 of the Law of Limitation Act (supra) and the specific law that is section 41(2) of the Land Disputes Courts Act (supra) be guided by the specific provision providing for the time of appeal in matters originating from the District land and Housing Tribunal and all matters relating to extension of time. Section 41(2) of the Land Disputes Courts' Act, [Cap 216 R.E 2019] provides as follows;

*"41(2) 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 day."*

Two aspects may be extracted from the above provision, namely; the right to appeal which is within the period of 45 days since the delivery of the decision by the District Land and Housing Tribunal, in this case, on the 22<sup>nd</sup> March 2022. The second one, being the registry in which an appeal was

supposed to be filed. Basing on the above provision, it goes without saying that the applicant's appeal was supposed to be filed within 45 days before the High Court registry not otherwise.

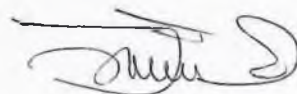
Counting from 22<sup>nd</sup> March 2022 when the judgment was delivered, the period of 45 days to appeal ended on the 06<sup>th</sup> of May 2022. Counting from 07<sup>th</sup> May 2022 till the 07<sup>th</sup> June 2022 it is a period of 34 days, hence the applicant delayed for the period of 34 days since the lapsing of the 45 days' period of appeal was on the 06<sup>th</sup> May 2022. Therefore, the applicant is required to account for a total of 34 days delayed.

The applicant's argument is that, his delay was a technical one since she filed her appeal in a wrong registry before the District Land and Housing Tribunal for Arusha, at Arusha. The applicant stated in her oral submissions in support of her affidavit, that 7 days later from the date she filed her appeal before the Tribunal's registry she was informed by the Tribunal's clerk that she filed her appeal in a wrong registry. The 7 days from when she filed the appeal wrongly ended on the 29<sup>th</sup> of April 2022, there is no where the clerk has been mentioned in the applicant's affidavit to have informed the applicant as she has stated. Further to that, it is a rule of the thumb that the clerk also was supposed to swear an affidavit in substantiating the same,

failure to do so I subscribe to the respondent's view that it violated the rules hence this ground fails to stand.

However, it should be noted that, in support of this ground, the applicant filed with the application the copy of the electronic receipts, dated 21<sup>st</sup> April 2022 at 14: 27:07 paid by the applicant which was issued in acknowledge of payment of 20,000 TZS a filing fees for filing the petition of appeal to the High Court. This receipt in my view, shows two things which are important, **one**, it was filed in the High Court not the DLHT, **two**, it shows the names of the applicant as the person who paid the fees therefore the person who was the appellant. **Three**, it also shows that the application was filed by the applicant personally, not her Advocate. These three aspect, proves that the applicant did not sleep over her right, she took action but unfortunately being a lay person, she filed the appeal in time but mistakenly in the wrong registry. This in my view amounts technical delay.

Now that we have agreed that, the applicant has successfully substantiated the technical delay, reasonably, one could expect the applicant to have applied for extension of time on the 30<sup>th</sup> April 2022, but the same was not done by the applicant. Therefore, the applicant is also duty bound to account for the period since 30<sup>th</sup> April 2022 till 07<sup>th</sup> June 2022 as to what

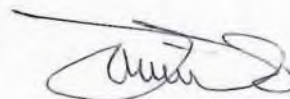




made her not appeal in that period and filed an application for time enlargement on the 08<sup>th</sup> June 2022 instead of 30<sup>th</sup> April 2022. In the case of **Lyamuya Contruction Co. Ltd vs Registered Trustees of Young Women Christian Association**, civil application No. 02 of 2010(unreported), in which the court laid below guidelines for the application for extension of time as follows;

- i. That the applicant must account for the whole period of delay*
- ii. That the delay should not be inordinate*
- iii. That the applicant must show diligence but not apathy, negligence or sloppiness of the action that he intends to take*
- iv. If the court feels that there are other sufficient reasons, such as existence of the point of law of sufficient importance such as illegality of the decision sought to be challenged*

There is nothing more than the fact that her delay was a technical one, the delay which she knew 7 days later after the 22<sup>nd</sup> of March 2022 on which she filed her appeal wrongly before the District Land and Housing Tribunal. It is my considered view that, from the 30<sup>th</sup> April 2022 to 07<sup>th</sup> June 2022 the period of delay is of about 37 days. The issue is whether the applicant has justifiable causes for the delayed days, from the submission by the counsel



for the applicant, after she was informed of filing an appeal in the wrong registry he used the rest of the days to search for and engage the Advocate to represent her. I am aware of the authority in the case of **Modestus Daudi Kangalawe vs Dominicus Utenga**, Civil Application No. 139 of 2020, the Court of Appeal of Tanzania held that;

*"...it was a settled principle that negligence and ignorance of law have never been sufficient or good causes for extension of time."*

Moreover, while I agree with the position of the law in the above authority which I accept to be good law, I find the applicant to be ignorant but not negligent. As we all agree that ignorance in certain profession is not a sin, I find that if a person is ignorant but not negligent then the applicability and relevance of this case authority is a bit distinguishable. The authority above referred is contextual its application depends on the context and circumstances of each particular case the main focus being the end of justice. In my view, substantive justice in this case requires the court to find that, the case at hand is distinguishable.

In line with the above exposition, it is my considered view that, the application at hand is merited, the applicant's delay was not due to

negligence, or sloppiness. In the upshot, this application is merited, and therefore allowed. The applicant is given 21 (twenty-one days) to file her appeal to this court. since the respondent has no contribution on the delay, no order as to cost is made.

Order accordingly.

**DATED** at **ARUSHA** on the 20<sup>th</sup> day of September 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

**J.C. TIGANGA**

**JUDGE.**