

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

**(LAND DIVISION)**

**ARUSHA DISTRICT REGISTRY  
AT ARUSHA**

**MISC. LAND APPLICATION NO.2 OF 2022**

*(Arising from the District Land and Housing Tribunal for Manyara at Babati, Misc. Application No. 83 of 2012, and Land Appeal No. 58 of 2011, Originating from Nangwa Ward Tribunal, Land Dispute No. 16 of 2010)*

BETWEEN

**RAPHAEL GEWE ..... APPLICANT**

**AND**

**PANTALEO GEWE ..... RESPONDENT**

**R U L I N G**

*Date of last Order: 26<sup>th</sup> September, 2022*

*Date of Ruling: 30<sup>th</sup> September, 2022*

**MALATA, J.**

The Applicant herein, **Raphael Gewe**, on 5/1/2022 filed this Application for extension of time within which to appeal out of time against the ruling of the District Land and Housing Tribunal for Manyara (henceforth "the DLHT"), in Miscellaneous Land Application No. 83 of 2012 delivered on 18/12/2012. The application was preferred under section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The said Application was registered as Miscellaneous Land Application No. 02 of 2022. The application is supported by affidavit of the Applicant. On the other hand,



the Respondent contested the application through counter affidavit deponed by himself.

The Applicant had filed Miscellaneous Application No. 83 of 2012 against the Respondent in the DLHT seeking to set aside the dismissal order dated 03/04/2012 for non-appearance of the Applicant. The DLHT found no cogent reasons advanced by the Applicant, consequently, dismissed the Application with costs for lacking of merits. The ruling was delivered in the presence of both parties on 18/12/2012. In 2022 the Applicant found himself aggrieved by that decision, but the time had already gone for more than nine (9) years, hence, this application.

At the hearing of the application, the Applicant was represented by Mr. Erick Mbeya, learned advocate while the Respondent appeared in Court in person unrepresented. The application was disposed of through filing written submissions, unfortunately, for unknown reasons the Respondent did not file his reply submission.

It is trite law that, failure to file written submissions as ordered by court is tantamount to failure to enter appearance in court when the case is fixed for hearing. In this respect I find authority in the Court of Appeal decision in **Godfrey Kimbe vs Peter Ngonyani**, Civil Appeal No. 41 of

2014 which cited its previous decision in **National Insurance Corporation of (T) Ltd & Another vs Shengena Limited**, Civil Application No. 20 of 2007 (both unreported), where the Court made the following observation:

*"In the circumstances, we are constrained to decide the preliminary objection without the advantage of the arguments of the applicant. We are taking this course because **failure to lodge written submissions after being so ordered by the Court, is tantamount to failure to prosecute or defend one's case.**"*

(Emphasis added)

In the circumstances, the Respondent has failed to defend the application, I proceed to determine the application basing on the Applicant's submission only.

I now proceed to determine the substantive part of the application. In support of the Application, the Applicant through his affidavit raised three key reasons as grounds for extension of time, namely; **one**, illegalities, **two**, the Applicant's ill-health and **three**, illiteracy of the Applicant. The stated grounds are gathered from paragraphs 6, 7, 8 and 9 of the Applicant's affidavit.

On the other hand, the Respondent attacked the Applicant's affidavit stating that no sufficient reasons have been adduced for extension of

time, justifying the length of delayed time. He also stated that, the reasons advanced by the Applicant are mere speculations. Finally, he insisted that the Respondent be left to enjoy the fruits of the tribunal's decision without any disturbance.

In the written submission, Mr. Mbeya amplified the reasons for failure to pursue the appeal within the possible shortest period as contained in the affidavit. He submitted that; **one**, the Applicant is unlettered and layperson as such referred this Court in case of **Martha Daniel vs Peter Thomas Nko** [1992] TLR 359, in which the said ground was accorded weight. **Two**, sickness by the Applicant and **lastly** is presence of illegalities in the impugned ruling. Regarding the alleged illegalities, he referred this Court to various Court decisions including: **The Attorney General vs Tanzania Ports Authority & 2 Others**, Civil Application 87 of 2016 (unreported) and **Permanent Secretary, Ministry of Defence, National Services vs Devram Valambhia** [1992] TLR 185. In all the referred decisions, the Court of Appeal considered illegality as sufficient reason for extending time.

Part of the submission by Applicant's counsel was in respect of the substantive part of the ruling regarding existence of illegalities which, in my view was prematurely argued. I hold this view because as at this

stage, this Court is enjoined to deal with grounds for extension of time only. Guidance in this respect is absorbed in the case of **Mary Rwabizi t/a Amuga Enterprises vs National Microfinance PLC**, Civil Application No. 378/01 of 2019 (both unreported), where the Court held:

*"Therefore, to demand further explanation at this stage, will in my view, be prejudicial to what the Court will have to deal with if an application for extension of time is granted- It is equally inappropriate at this stage, I think, for me to go further and determine the substance of the claim of illegality."*

At the outset, in applications of this nature, the Applicant bears the duty to adduce sufficient reasons for the delay so as to be granted the extension of time sought. In applications for extension of time, sufficient reasons for the delay are *conditio sine qua non*. At this juncture, the issue is whether the Applicant has placed before this Court sufficient reasons for the delay to warrant him extension of time.

In so doing, the Applicant must have accounted for the length of the delay, he must show that he acted diligently, without any kind of negligence or sloppiness and that the delay was not inordinate. If the above factors are furnished to this Court, it can exercise its discretionary

powers to grant extension of time sought, short of that, the Court cannot. This principle is gathered from numerous Court of Appeal decisions. I shall refer to few decisions establishing the above principle, including: **Lyamuya Construction Company Limited vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), which held inter alia:

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:*

- (a) The applicant must account for all the period of delay;*
- (b) The delay should not be inordinate;*
- (c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*
- (d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged."*

Similar stance was taken in the case of **Mpoki Lutengano Mwakabuta and Frida Vumilia Kessy vs Jane Jonathan (As a**

***Legal representative of the late Simon Mpera soka deceased***),

Civil Application No. 566/01 of 2018 (unreported). The Court observed that:

*"It is settled law that in exercising my jurisdiction under rule 10 of the Rules which is discretionary, I have to be guided by agreed tale signs. These are the length of the delay/ whether it has been explained away, diligence on the part of the applicant as opposed to negligence or sloppiness and whether or not there is an illegality in the decision sought to be impugned.*

Lastly, the case of **African Airlines International Ltd vs Eastern and Southern African Trade and Development Bank** [2003] 1 EA, where the Court principled that:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the Defendant if time is extended".*

In ascertaining length of delayed time, the record shows that the impugned ruling was delivered on 18/12/2012 and the instant application was filed on 05/01/2022. It is apt that the Applicant delayed

for almost nine (9) years, which is equivalent to 3,285 days. It is undisputed that the ruling sought to be appealed against was delivered in the presence of both parties. For clarity, the record speak for itself soon after the ruling was delivered:

***"Tribunal: Ruling is hereby delivered in the presence of both parties.***

***Sgd: P. J. Makwandi***

***CHAIRMAN***

***18/12/2012***

***Tribunal: Right of Appeal explained.***

***Sgd: P. J. Makwandi***

***CHAIRMAN***

***18/12/2012"***

As stated herein above, the Applicant raised three reasons for consideration of by the Court in granting extension of time. These are, illegalities in the impugned decision, illiteracy and sickness on the part of the Applicant. However, the said grounds have to be considered firmly in conjunction with the principles expounded in **Lyamuya Construction case** (supra).

Further, there was no documentary proof that the Applicant was sick for the period of more than nine (9) years, making him unable to take legal action. As to the reasons of unlettered/illiteracy, it is well settled principle of law that, it is not good cause as ignorance of the law has no excuse. Similar position was held by the Court of Appeal in **Yusuph Masalu @ Jiduvi and 3 Others vs Republic**, Criminal Application No. 112/03 of 2019 (unreported), where it was held:

*"Notwithstanding that lapse, as shown above, the applicants are in effect, pleading ignorance of law as the cause of their delay. It is trite position that ignorance of law does not constitute good cause - see for instance, the cases of Ngao Godwin Losero v. Julius Mwarabu, Civil Application No. 10 of 2011."*

For the sake of argument, even if it persisted, such ignorance cannot be left to stand for more than nine (9) years. I am alive that existence of illegality in the impugned decision constitutes sufficient reason for the extension of time. However, such illegalities must be apparent on the face of record and promptly acted upon. This will work as an alarm to the decree holder from free enjoyment taking cognance of the steps taken by the affected party. Staying for so long without taking any action like in this case, no matter strong illegalities one may have, cannot in my view withstand. Existence of illegalities in the impugned

decision, if any, cannot as well be a justification for extending time if the Applicant has proved to be negligent, inactive or sloppiness. In this case, inactive for more than nine (9) years while the decree holder enjoying the fruits of the decree issued in the presence of Applicant. There is presumption in law that, if one lawful owner of the land, leaves the trespasser continue enjoying over the landed property for over thirteen years undisputed, then the owner's right will be forfeited, through adverse possession.

It is well settled principle of law that, the Applicant must account for every day of delay for extension of time to be granted. This principle is gathered from the Court of Appeal decision in the case of **Wambele Mtumwa Shahame vs Mohamed Hamis**, Civil Reference No. 8 of 2016 (unreported), where the Court of Appeal reiterated its previous position in the case of **Bushfire Hassan vs Latina Lucia Masanya**, Civil Application No. 3 of the 2007 (unreported) where it held that:

*"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"*

In the present application, there is no any attempt on the part of the Applicant to account for the delay of the whole period of nine years.

This manifests nothing but lack of seriousness on the part of the Applicant. He simply alleged sickness without any proof of the same. The pleaded, illegality and ignorance of the law are in my view considered to be afterthought. In the circumstances, the Applicant has failed to satisfy this Court that, the delay was contributed by the aforesaid grounds. In the absence, therefore, this Court has nowhere to rely upon in exercising its judicial discretion to grant the extension of time.

I am of the settled view that, basing on the above findings, even the raised illegalities as ground for extending time must be considered together with other reasons numerated in **Lyamuya's Case** and the **Bushfire case**. These includes; **one**, accounting for length the delayed period, **two**, the delay should not be inordinate, **three**, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

Should what transpired in this application left to survive, then we will be condoning negligence with implication that litigation shall not come to an end. Also, allowing the application of this nature will be prejudicial to the Respondent who was in peaceful enjoyment of the fruits of the

Tribunal's decree for more nine (9) years undisturbed while the Applicant was just looking at him.

Having considered the grounds advanced by the Applicant and the prevailing circumstances in this case, I am of the settled mind that, the Applicant has undoubtedly failed to furnish sufficient cause for the delay to warrant extension. The reasons being, **one**, the Applicant was present when the impugned Ruling was delivered on 18/12/2012, **two**, the Applicant filed the Application after nine (9) years from the date of impugned Ruling, **three**, the Applicant did not account for the length of delayed period, **four**, the delay is too inordinate and unbearable, **five**, the applicant has shown lack of diligence and sloppiness in taking action, **six**, no proof of alleged sickness for the entire period, **seven**, the Applicant demonstrated unbelievable inactiveness or negligence in searching for his rights, if any.

Consequently, this Court finds that, the Application for extension of time is devoid of merits and it is accordingly dismissed with costs.

Order accordingly,

DATED at ARUSHA this 30<sup>th</sup> day of September, 2022



  
G. P. MALATA  
JUDGE  
30<sup>TH</sup> SEPTEMBER, 2022