

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPLICATION NO 18 OF 2022

(Arising from the ruling of the District Land and Housing Tribunal for Tarime at
Tarime in Misc. Land Application No 168 of 2020)

KABATE NYANKEKENA APPLICANT

VERSUS

NDEGE GOGOIDO WANG'ILA RESPONDENT

RULING

24th August & 29th September, 2022

F. H. Mahimbali, J.

The applicant is seeking extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal which dismissed his application seeking extension of time to appeal against the exparte judgment of the Ward Tribunal.

With this application, establishes lack of seriousness of the applicant. In every time he has never been punctual. As what reasons he is advancing, seem to be far away from the truth.

During the hearing of this application, the applicant just prayed that the reasons contained in his affidavit be adopted by the court to form part of his submission.

As to why he failed to appeal on time against the decision of the DLHT, he has no any reason stated in his affidavit. The reasons he is advancing are reasons for delay of appealing before the DLHT against the decision of the Ward Tribunal. With the current application, I have not seen any good reasons stated.

On his part, Mr. Makowe, learned advocate for the respondent resisted the application calling it unworthy of consideration. He said this, relying on the basis that there are no reasons for the said delay and that he has not accounted each day of delay.

Submitting in rebuttal of the application, Mr. Makowe submitted that, this Court in her ruling dated 20th June, 2022, ordered the applicant's affidavit be amended to cure the legal defect argued during the preliminary objection. Instead of amending the jurat, the applicant rewrote the whole of his affidavit and came up with no any reason that made him delay appealing against the decision of the DLHT. With this, he submitted that the application is of no merit. As the amended affidavit in support of the application has no reasons supporting for the

said application, the application is bound to fail. What is actually contained in paragraphs 5 and 6 of the affidavits is not clear as what actually befell the applicant not to file application on time. In essence, there are no any reasons and no accounting is done.

All in all, guided by the minimal guidelines set by the court of Appeal in the case of **Ngao Godwin Losero**, Civil Application No 10 of 2015 at page 4 making reference to the case of **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (Civil Application No. 2/2010 – unreported) the Court of Appeal reiterated the following guidelines for the grant of extension of time.

- 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 is intending to take.*
- d) If the court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; such as the illegality of the decisions ought to be challenged.*

In reaching this verdict, I have dispassionately considered and weighed the rival arguments from parties through their respective counsel. For sure I am mindful that to refuse or grant this application is the court's discretion. However to do so there must accounted reasons for that. In **Mbogo Vs. Shah** (1968) EA the defunct Court of Appeal for Eastern Africa held:

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."

All this said and done, what has been deponed and argued by the applicant is legally speaking nothing for this Court's consideration. The applicant's amended affidavit says nothing of it. I too have nothing to consider.

In the end result, the application is dismissed with costs for being devoid of any merit.

DATED at MUSOMA this 29th day of September, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 29th day of September, 2022 in the presence of the applicant, Mr. Baraka Makowe advocate for the respondent and Mr. Gidion Mugo, RMA.

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes that form a cursive, elongated shape.

F. H. Mahimbali

Judge