

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO SUB REGISTRY)**

**AT MOROGORO**

**MISC. LAND APPLICATION NO. 18 OF 2022**

*(Originating from the Land Appeal No. 5 of 2021 District Land and Housing Tribunal for  
Kilosa at Kilosa)*

**MARIAMU OMARI SOMWANA ..... APPLICANT**

**VERSUS**

**SALUM SALEHE MAKWAYA ..... RESPONDENT**

**RULING**

26 & 30.09.2022

**NDESAMBURO, J**

Mariamum Omari Somwana on 20<sup>th</sup> May, 2022 knocked doors of this court seeking for an extension of time to file an appeal to challenge the judgment and a decree passed by Kilosa District Land and Housing Tribunal (DLHT). The application has been brought under section 38(1) of the Land Disputes Courts Act, Cap. 216 R.E 2019 (LDCA) and supported by affidavit



deponed by the applicant. On the other hand, the respondent one Salum Salehe Makwaya has lodged counter affidavit challenging the application.

Facts which lead to this application as per the affidavit goes as follows; the applicant unsuccessfully instituted an appeal before the DLHT which rendered its decision on 23<sup>rd</sup> February, 2022. She requested to be supplied with copy of the decision and the same was supplied to her on 22<sup>nd</sup> March, 2022. Further that, she lodged an appeal at the High Court, Morogoro Sub-Registry on 22<sup>nd</sup> April, 2022 and her documents were received by the court clerk. She was informed by the court clerk to wait for the appeal to be uploaded in the system before she could be issued with a control number for payment of court's fees.

She went back home and wait to be communicated by the court clerk. She made several follow up only to be told that, she was required to lodge her documents at the DLHT at Kilosa, that was on 13<sup>th</sup> May, 2022. She further deponed that, being a lay person, she had no knowledge if she was supposed to lodge the appeal at the DLHT. The applicant went on to explain that the delay in instituting the appeal was due to circumstances



which were not negligence and if the application is not granted, she will suffer.

Respondent resisted the application in his counter affidavit as the applicant has not demonstrated good cause and she failed to account for every single day of the delay.

When the application was called for hearing, parties appeared in person. The applicant, repeated what she deponed in her affidavit. Respondent resisted the application and submitted that, there is no any proof to support the applicant's story.

The applicant has predicated her application under the section 38(1) of the LDCA. The section provides that the court may for good and sufficient cause grant extension of time. For matter of clarity, the section reads as follows:

*38(1) "Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:*



*Provided that, the High Court may **for good and sufficient cause** extend the time for filing an appeal either before or after such period of sixty days has expired”.*

Having gone through the affidavit, counter affidavit and oral submissions by the parties, the issue for the determination is whether the applicant has established sufficient reasons to warrant extension of time sought. It is common knowledge that the term good cause has not been defined, however Courts have come up with decisions that guide on what may be considered as good cause. In **The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others, Civil Appeal No. 147 of 2006**, the Court of Appeal held:

*"The phrase "good cause" however has not been defined... It is generally accepted however, that the words should receive liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides is imputable to the applicant/appellant."*

Yet in another case of **Elius Mwakalinga vs Domina Kagaruki and 5 others**, Civil Application No. 120/12 of 2018, the Court of Appeal



held that, the applicant is supposed to show sufficient reasons upon which the court may consider in determining the application for the extension of time; these includes:

- i. The length of the delay;*
- ii. The reasons for the delay;*
- iii. Whether there is an arguable case such as whether there is a point of law on the illegality or otherwise of the decision sought to be challenged and*
- iv. The degree of prejudice to the defendant if the application is granted.*

As can be gathered from the affidavit, the applicant attributed the delay in lodging the appeal with technical ailment; that as a lay person, she lodged her appeal within time but in a wrong court. She realized that long after the lapse 60 days provided by the law when she was informed by the court clerk. Prior to that, she made several follow ups. The reason forwarded by the applicant met strong opposition from the respondent for being mere words which need proof. The applicant however, deponed and



submitted how she struggled to obtain necessary documents and managed to lodge her appeal but in a wrong court.

I have dispassionately considered and weighed the submitted cause of delay and I am convinced that what has been deposed by the applicant and as rightly argued by the respondent, her contention has not been supported by any proof. It is just mere words. It was expected of the applicant to support her claim with an affidavit from the said court clerk who was communicating with her. Without such proof, the ground remains mere allegation and cannot be taken as a good ground for enlargement of time.

However, the applicant in para 12 of her affidavit and in the orally submission submitted that she intends to appeal against the decision of the DLHT, if the application of the extension of time will not be granted, she will suffer. In the spirit of what was stated by the Court of Appeal in the case of **The Registered Trustees of the Archdiocese of Dar es Salaam** (supra) that the word good cause should be interpreted to receive liberal construction in order to advance **substantial justice**, I find this ground as a good and sufficient reason to exercise my discretion and

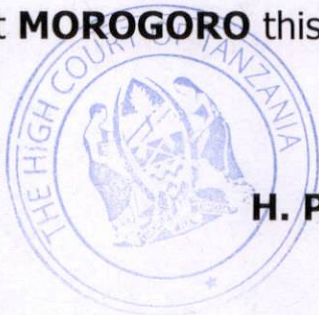


extend time and allow the applicant to lodge appeal. This is the spirit brought by the principle of overriding objective which calls for Courts to focus on substantial justice.

In conclusion, I hold that the applicant has failed to account for the delay. However, she has managed to convince the court that if the appeal will not be heard she will suffer and that is sufficient and good cause for the extension of time. I therefore grant extension of time to the applicant within which to lodge the appeal. The applicant is granted 30 days from the date of delivery of this ruling. No order as to costs.

It is so ordered.

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



  
**H. P. NDESAMBURO**

**JUDGE**

**30.09.2022**

**Court:** Ruling delivered in the presence of parties.



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**H. P. NDESAMBURO**

**JUDGE**

**30.09.2022**

Right to appeal Explained.



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

**H. P. NDESAMBURO**

**JUDGE**

**30.09.2022**