

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF SHINYANGA)
AT SHINYANGA**

MISCELLANEOUS LAND APPLICATION NO.59 OF 2022

*(Originating from Land Appeal No. 45 of 2020 District Land and Housing
Tribunal for Maswa at Maswa)*

NHELYA CHARLES NHELYA.....APPLICANT

VERSUS

KAHABI NKENGELE MLEBI..... RESPONDENT

RULING

Last order on 25/10/2022

Ruling date on 28/10/2022

R.B. Massam,J

By the chamber summons made under section 38[1] of the Land disputes Courts Act Cap 216 R. E 2019 the applicant applied for extension of time to file appeal out of time on land appeal no 45 of 2020. The applicant's application is supported by the affidavit deposed by Nhelya Charles Nhelya.

This application was argued orally and ex parte as respondent was summoned and there is prove of service but respondent did not appear for the reasons best known by himself. Brief facts go thus at Nhobora ward Tribunal one Maduhu Charles filed a suit claiming for trespass against respondent, he claimed that the said plot belongs to his late father who acquired since 1978 up to 2011 when he died, but at the end of the trial tribunal declare respondent to be the lawful owner of the disputed land, Aggrieved by the decision he appealed to Maswa District land and Housing Tribunal where the respondent declared a lawful owner of the suit land. Appellant /applicant in this application aggrieved by the decision, and being out of time brought this application for extension of time to file appeal out of time.

When the matter was called for hearing applicant was representing himself and respondent was absent. Applicant in his submission stated that the disputed land belongs to his father one Charles Nhelya who is now deceased, and the said plot is now under administration of one Maduhu Charles.

He added that the said land had nine [9] acres which amounted to Tshs seven million (7 Million), so the tribunal erred by deciding a case which has no jurisdiction, he stated again that one Limbu Supi did not

appear to court to testify that he bought the disputed land, thus why Kulita, Judge dismissed that appeal for noncompliance of law, so he pray to this court to extend time to file his appeal out of time, as he is not administrator of the estate of his father so he has no legs to stand. Lastly, he submitted that there is a pending case at Maswa District land and housing tribunal in the same issue. I have considered submissions from the applicant the pertinent issue for determination is **whether the application has merit.**

The application before me is prayer for extension of time to file appeal out of time before this court. It is settled law that granting the prayer of extension of time is within the discretion of the court. However, this discretion should be exercised judiciously for the court must be guided by the principle as to whether the applicant has advanced good cause for the court to consider and along the good cause. Applicant is required to accounts for each day of delay. The term good cause has not been defined under the law and therefore each day has to be determined in accordance with its own facts and circumstances surrounding it, as it was held in the case **of Jacob Shijaverse M/S Regent food and drinks Ltd** another Civil Application No. 440/08 of 2017 where the court of appeal at Mwanza held that what amounts to good cause cannot be laid by any hard and fast

rules but are dependent upon the facts obtained in each particular case that is each case will be decided on its own merit of course taking into consideration the question whether the application for extension of time has been promptly whether every delay has been explained away the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant.

In this matter at hand the applicant insisted that there was sufficient reasons before this court to extend time for the applicant to file the appeal out of time, he informed this court that he was not administrator of the estate of his father so he has no legs to stand to deal with the case, so he pray for extension of time to appeal to this court as the trial tribunal erred in deciding the matter in the said issue. It is a principle of law that despite applicant stated that he has sufficient reasons but he has a duty bound to account for every day of delay as it was stated by the court of appeal in **Airtel Tanzania Ltd verse Mister light Electrical Installation Co Ltd and another** Civil Application No. 37/01 of 2020 referred with authority to the case **of Bushiri Hassan Vs Latifa Lukio Mashala** Civil Application No. 3 of 2007[unreported] where the court emphasized that..... delay of even a single day has to be accounted for otherwise

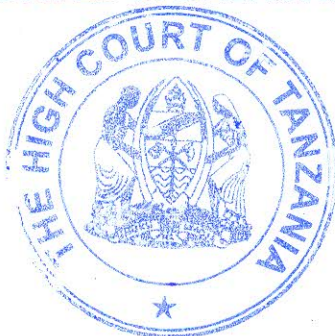
there would be no point of having rules prescribing the period within which certain steps has to be taken.

In this application applicant was required to file his appeal on 26/2/2021 so he was required to account for the days delayed which is 605 days as I have analyzed above, but applicant stated that he failed to do so as he was not administrator of the estate of his father and the administration was under one Maduhu Charles, for that reasons this court find out applicant succeeded to advance good cause to this court to consider the sufficient reasons for the said delay even though he failed to account for each day of delay.

Based on what has been discussed above I find this application with merit and I proceed to allow it, the applicant has to file his appeal within 14 days from the date of this order. No order of the costs according to the nature of the case.

It is so ordered.

DATED at SHINYANGA this 28th day of October, 2022.




R.B. Massam.
JUDGE
28/10/2022