

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC. LAND CASE APPLICATION No. 112 OF 2022

*(Originating from the District Land and Housing tribunal for Arusha at Arusha,
Application No. 202 of 2018)*

NAISHIYE JOEL..... APPLICANT

VERSUS

HASSAN ADAM JUMA.....RESPONDENT

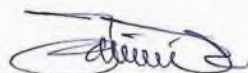
RULING

24th October & 15th November 2022

TIGANGA, J.

The applicant was aggrieved by the decision and decree of the District Land and Housing Tribunal for Arusha at Arusha herein to be referred to as the "DLHT" in Application No. 202 of 2018. She thus, intended to appeal challenging the said decision. Unfortunately, before implementing such intention, she realised to be out of time prescribed by law. Therefore, she was duty bound to first apply for extension of time before lodging her appeal.

In her tireless efforts, the applicant filed in this Court the chamber summons under section 41 (2) of the Land Disputes Courts Act [Cap.



216 R.E 2019]. The chamber summons was supported by the affidavit sworn by the applicant herself. In that chamber summons, the reliefs sought are two to wit; extension of time for the applicant to appeal out of time and other reliefs this court deems fit and just to grant.

The brief gathered facts from the record are of the following morphology. The applicant who was also the applicant in the DLHT, filed the application before the DLHT claiming the piece of land measuring 8 metres length and 2 metres width located at White Rose hamlet in the village of Ilkurei, Kilanyi ward in the District of Arusha. The said suit land is bordered with the road in the North and West and the applicant in the South and East. The applicant alleged that, she owns the suit land which they had been jointly owning with her late husband. And that, she was appointed an Administratrix of the estate of her deceased husband. Also, the applicant alleged that among the properties which form the estate of her deceased husband and which remained under his administratrix-ship is the land in dispute. The applicant further alleged that, in 2012 the respondent trespassed to the said land and built thereon a business room without her consent, the act which annoyed the applicant and prevented her from doing businesses thereat. After lodging the complaint to the village land council, the council ordered the

respondent to give vacant possession but he refused, the fact which necessitated the application before the DLHT.

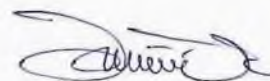
Having heard the dispute between the parties, the DLHT ruled against the applicant but she could not appeal in time. As the result she had to file this application. As earlier on pointed out, this application is for extension of time for the applicant to be allowed to file the appeal out of time before this Court. It is a cerebrated principle that for a person to be entitled to the extension of time, as a matter of law, must exhibit good cause for his delay to do what he was supposed to do within the time prescribed by law. In this application, the issue therefore to be determined by this Court is whether the applicant has shown good cause to warrant extension of time in accordance with the law. The requirement to show good cause before granting the application was observed in various case laws in our jurisdiction. In the landmark case of **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 02 of 2010 (unreported), the Court of Appeal of Tanzania underlined some of the elements that, constitutes good cause which may be based on in the exercise of discretion to enlarge time to file an appeal. The court held;

"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."*

It is only when the applicant manages to convince the court that the above set principles of law exist in her application is when the judicial discretion of the court can be invoked unconditionally.

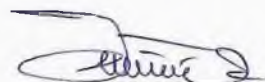
However, the alleged good cause to be based on by the applicant in the application, must be clearly shown in the affidavit supporting the



chamber summons. The failure could not serve the application from being dismissed. This is also the guiding principle set forth in the case of **Lyamuya Construction Company Limited** (supra) when it was said:

"The principle that can be extracted from this holding is that, the omission to properly cite the relief in the Notice of Motion is not necessarily fatal if that relief can be gleaned from the accompanying affidavit. If the principle is taken-broadly, it would, I think, also, include the omission to state the grounds as in the present case, from which one may conclude that, it too, is not necessarily fatal, if the grounds are shown in the accompanying affidavit."

Reading the affidavit of the applicant which was vigorously disputed by the respondent through his counter affidavit from paragraphs 4 to 8, only two grounds have been set as good causes for the Court to consider in enlarging time for the applicant to file the appeal out of time. These are, through interpretation, technical delay and overwhelming chance of success in the intended appeal. The question for determination is whether, those grounds constitutes good cause. In order to appreciate and effectively respond to the question, the submissions of parties are of necessary help. In the submission, the applicant was represented by Ms. Aikael Michael, learned Advocate,

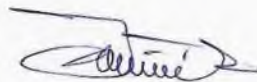


whereas the respondent enjoyed the service of Mr. Mbise, also learned Advocate.

In support of the application, Ms. Michael submitted that, the impugned judgment was delivered on 16th December, 2021 and the appeal was filed in time on 04th February, 2021. However, that appeal was rejected for not attaching the copy of decree, she said. Moreover, Ms. Michael further contended that, following that rejection, on 18th February, 2022 they electronically filed an application for extension of time in order to file the appeal out of time as they were already barred by the law of limitation.

That, on 19th July, 2022 when the matter was scheduled for mention, she discovered that the application was filed under wrong provision of the law thus prayed and was allowed to withdraw it with leave to refile. As a result, this application was filed.

Intimating on the reasons for the delay, Ms. Michael submitted that, it was caused by the Advocate from Tanzania Women Lawyers Association (TAWLA) who was assigned the matter and not the applicant. Lastly, she prayed for the application to be granted because the applicant should not be punished for the misdeeds of the Advocate. Cementing on her arguments, she cited the case of **FINCA Limited**



and Another versus Boniphace Mwalukisa, Civil Application No. 589 of 2018 without saying whether reported or otherwise and without also supplying the copy to the Court.

Counteracting, Mr. Mbise urged this court to accord no weight to the application for the same being unfounded. He said, looking at the date the decision was delivered and the one which purported the appeal was filed from 16/12/2016 to 04/02/2022 already the applicant was out of time because the 45 days within which the law allows the appeal to be filed had already been elapsed, it ended on 31/02/2022.

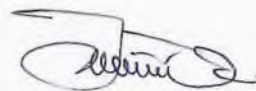
On the argument that, the delay was caused by the Advocate and not the applicant, Mr. Mbise was of the view that, Advocates acts on behalf of the clients and therefore the two are inseparable. To buttress the arguments, he cited the case of **Registered Trustees of Shadily versus Muhfudh Salimomary bin Zagar (Administrator of the Estate of the late Salim Omary)**, Civil application No. 512/01 of 2018. In this case, the Court of Appeal observed that, the applicant should demonstrate reasons for delay by accounting for each day of delay. In his considered view, Mr. Mbise said, in this application, the applicant has not shown how many days she delayed and account for them one after the other.



Further analysing the submission by Ms. Michael, Mr. Mbise contended that, despite the fact that the application under paragraph 5 of the affidavit shows that, he received the impugned decree of the DLHT on 18/02/2022 and filed the application on 01/08/2022, still the applicant has never accounted for the days between when she received the decree and the date she filed the application.

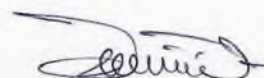
Mr. Mbise is also wondering as to why the applicant did not annex the letters of applying for the delayed decree in order to substantiate her claim. He was also wondering why did the applicant not even attach the copies of the impugned judgment and decree. That failure to attach those documents denies the Court an opportunity of knowing the assertions made by the applicant.

Lastly, Mr. Mbise faulted the submission by his fellow Advocate that, the applicant was economically poor to prosecute the matter to the extent of seeking aid from legal aid organizations. To oppose that point, he cited the case of **Revenatha Eliawony Meena versus Albert Eliawony Meena**, Civil Application No. 9/05 of 2017 (unreported). He submitted that, basing on such authority this court should find the exemption of fees made by the Deputy Registrar to the applicant to be misconceived and order the applicant to pay court fees.



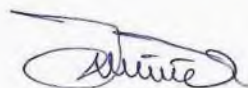
In rejoinder, Ms. Michael had nothing new to add, she reiterated by way of insistence what she submitted in chief. However, she went on supporting the decision by the Court Deputy Registrar of exempting the applicant from paying court fees because she has no ability to pay and the Deputy Registrar was satisfied to exempt the applicant after assessing her and issued the letter dated 11/08/2022.

That being a summary of the submissions by the parties, I find one point of concern which was raised by the counsel for the respondent. That is the issue of exemption of paying court fee which was done by the Deputy Registrar in favour of the applicant. That being the point of law, I find it important to start with it. Gleaning from the issue, I think this should not detain me much. I say so because it has already been determined by the Deputy Registrar upon being satisfied that the applicant is deserving such exemption. The respondent has not complained that the Deputy Registrar did not follow procedures in assessing and granting exemption for this court to intervene. In my view, that was actually raised out of context and it has not been said that the exemption did in any way prejudiced the respondent. I find no merit in the point and I decline to grant it.



On the submission that the intended appeal has great chance of success, I find it not substantiated. The reasons for this is apparent. First, the applicant did not depose in her affidavit what makes her to believe that if at all the time is extended, she has a great chance of success in the appeal. In my view, apart from failure to annex the impugned judgment and decree which are of course necessary for the court to peruse and look into possibility of success in the appeal challenging them, the applicant was supposed to have demonstrated in the affidavit on such ground in order to satisfy the court on the possibility of success in the appeal, failure of which renders the contention illusory.

Regarding the ground of technical delay, it is obvious that, for the decision which was delivered on 16th December, 2021 the 45 days within which the applicant was required to file an appeal, ended on 30th January, 2022 and not 04th February, 2022 as Ms. Michael wants this court to believe. As a result of it, 5 days as already elapsed of which the applicant need account for the delay and which have not been accounted. Furthermore, from 18th February, 2022 a day the applicant is alleging to have received the decree from the DLHT to the 01st August, 2022 when the applicant filed the first application seeking for



extension of time to file the appeal out of time, 163 days have elapsed which also the applicant needed to account but she did not. Now 163 days plus 5 days makes a total of 168 days which stand unaccounted for. Unfortunately, not only that these days were not accounted for but also that no any explanation has been given about them, in the circumstances therefore, there is no ground upon which this court can invoke and exercise its discretionary power to grant the application as there is no good cause demonstrated by the applicant.

For the foregoing reasons, this application is non meritorious. It is not befitting within the principles established by the authority above. It is therefore dismissed. Following the fact that the applicant is in terms of the letter with reference No. AB.39/145/01/Vol. 1/24 dated 11th August, 2022 from the Deputy Registrar of this Court is exempted from fees, I order no costs against the applicant.

It is accordingly ordered.

DATED at ARUSHA on this 15th day of November 2022.




J.C. TIGANGA

JUDGE