

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO

MISC. CIVIL APPLICATION NO. 52 OF 2022

(Originating from Land Appeal No. 68 of 2021 in the District Land and Housing Tribunal for Morogoro)

KAMUGISHA SADIKI APPLICANT

VERSUS

ANTIPAS MZEHE RESPONDENT

RULING

Hearing date on: 25/10/2022
Ruling date on: 28/10/2022

NGWEMBE, J.

This is an application for extension of time to lodge an appeal against the judgement of the District Land and Housing Tribunal for Morogoro, delivered on 27/04/2022. It was made under section 41 (2) of the **Land Disputes Courts Act, [Cap 216 RE 2019]**, supported by the applicant's affidavit and certified to be of extremely urgency.

From the affidavit and submissions of learned counsels, it is clear the applicant unsuccessfully, appealed against the decision of the Land Ward Tribunal in Land Dispute No. 11 of 2021 at Lukobe Ward Tribunal entered on 07/05/2021 and the subsequent appeal in Land Appeal No. 68 of 2021 delivered on 27/4/2022.

Being so aggrieved with that decision, the applicant herein ventured timeously, to file an appeal to this house of justice as Land Appeal No. 65 of 2022. Unfortunate to the applicant, the appeal was likewise struck out for being incompetent.

The applicant in this matter has raised some complaints against his advocate. That the striking out of the appeal was due to mistakes made by his advocate. That, his advocate misled him by filing an incompetent appeal. Added by raising the issue of illegality of the Ward Tribunal's decision. In response, the respondent filed a counter affidavit denying and disputing the whole contents of the applicant's affidavit.

Fortunately, on the hearing date, both parties procured legal services of learned advocates, while advocate Mkilya Daudi represented the applicant, advocate Benjamin Jonas appeared for the respondent.

Advocate Mkilya forcefully, submitted that, the applicant was aggrieved by the decision of the District Land and Housing Tribunal and contemplated to appeal against the same. He actually appealed through Land Appeal No. 65 of 2022, but as deponed in the affidavit, it was struck out for being filed direct to this court instead of doing so at the Trial Tribunal. Went further that the applicant is a layman, having engaged an advocate for that task. He had reliance on the advocate's conduct of the suit. Unfortunately, the said advocate mishandled the appeal. Endeavored to establish the second ground, that the tribunal's decision had illegalities, then prayed the application for extension of time be granted.

In turn, Mr. Benjamin Jonas commenced his argument by referring this court to the case of **Dominic Yohana Vs. Salma Shite, Civil**

Application No. 120/03 of 2020 which ruled that, ignorance of procedure would not constitute good cause for extension of time. Proceeded to cite the case of **Muse Zongori Kisere Vs. Richard Kisika Mugendi and 20 others, Civil Application No. 244/01 of 2019**, that the applicant is required to account for each and every day of delay. The original appeal was struck out on 08/09/2022 and this application was lodged in this court on 07/10/2022, equivalent to 30 days. To Mr. Benjamin, the applicant has not accounted for those 30 days. Added, the appellant in his affidavit alleged to have collected the copies of the ruling on 27/09/2022 while the same was ready for collection on 08/09/2022 when was signed and dated. It was for the applicant to be diligent.

Further referred this court to the case of **Shelina Jahangir and 4 others Vs. Nyakutonya, Civil Application No. 47 of 2020**. Equally, discredited the complaint that the tribunal's decision had illegalities. Rested by stating that the applicant has not shown any sufficient ground for extension of time, thus same be dismissed forthwith.

Having considered the contesting submissions by the parties, along with the pleadings, it is my duty now to determine the merit of the application on whether or not this application should be granted or otherwise.

First and foremost, I accept that what has been adopted by the applicant was a proper cause. His appeal having been struck out in the above circumstances he had a right to pursue the said appeal after meeting the prerequisite. Being caught in time limit, he was correct to apply for extension of time for his contemplated pursuit.

On the basic premise, I agree with the applicant's advocate Mr. Mkilya Daudi that this court is empowered to extend time to appeal before this court under section 41 (2) of **The Land Disputes Courts Act, [Cap 216 RE 2019]**. In whole, section 41 provides that: -

Section 41 (1) *"Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court."*

(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days."

The above is what the applicant invites this court to exercise, so that he can file his appeal against the decision of the District Land and Housing Tribunal, which he is obviously aggrieved with. Being guided properly, granting extension of time is a discretionary power of this court, however must be exercised judiciously. **Black's Law Dictionary (8th Edition)**, is attributed to the discretionary powers of the court judiciously to mean *"Well considered, discreet, wisely and circumspect"* Correlating with the Court of Appeal decisions in **UAP Insurance Tanzania Ltd Vs. Noble Motors Limited [2017] T.L.R. 583** and **Karibu Textiles Mills Ltd Vs. Commissioner General (TRA), Civil Application No. 192 of 2016**, construed '*judicious exercise*' of powers by the court is to make a decision with a sense of justice by judging the

material before it having regard to the particular circumstances of each case.

The long unfettered standing position of the law relevant herein is that, in order for a party to be granted an extension of time to exercise any right which he has failed to exercise within time as prescribed by law, must adduce sufficient ground and reasonable cause. Reasonable ground or sufficient cause cannot and should not be universally interpreted, but the rule is, each case be taken on its own facts. There is a number of authorities to that effect including the cases of **Godwin Ndewesi and Karoli Ishengoma Vs. Tanzania Audit Corporation [1995] T.L.R. 200**; and **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010**. In **Lyamuya Construction's** case, some important parameters were set that: -

- (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; and*
- (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.*


Mr. Mkilya submitted that the incompetent appeal was filed within time and attributing the delay as *technical delay*. Mr. Benjamin strongly maintained that, the applicant's ignorance of the law cannot constitute ground for extension of time.

I have considered the cases cited, including that of **Dominic Yohana Vs. Salma Shite, Civil Application No. 120/03 of 2020** which was to the effect that, ignorance of the procedure does not fall within the scope and purview of good cause for extension of time. Same was observed in **Vedastus Raphael Vs. Mwanza City Council & Others, Civil Application 594 of 2021 (unreported)** where the Court of Appeal ruled thus: -

"On my part, I subscribe to the above authority. I agree with both parties that ignorance of the law does not constitute a good cause for extension of time"

On the other hand, I accept that when a person pursued his genuine cause in the wrong forum for the purpose of the law of limitation, can be accepted as a technical delay, which otherwise can be distinguished from actual delay. I have taken a kind cognizance of **Fortunatus Masha Vs. William Shija and Another [1997] T.L.R 154**, wherein the Court of Appeal ruled: -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In this circumstance an extension of time ought to be granted."



See also the case of **Bank M (Tanzania) Limited Vs. Enock Mwakyusa Civil Application No. 520/18 of 2017**, a technical delay was excused. I have the strength to rule that technical delay is excusable.

For the interest of justice, I will partly accept Mr. Mkilya's suggestion that a party should not be punished for his advocate's indolence. But I qualify that, advocate's errors cannot be a strong ground for extension of time. This has been the position of the law for time immemorial including in the case of **Yusufu Same & Another Vs. Hadija Yusufu, Civil Appeal 45 of 1998** where it was observed *inter alia*: -

"Generally speaking, an error made by an advocate through negligence or lack of diligence is not sufficient cause for extension of time... But there are times, depending on the overall circumstances surrounding the case, where extension of time may be granted even where there is some element of negligence by the applicant's advocate"

Though this court does not invite indolence, the whole period of time spent in prosecuting the incompetent appeal deserves to be condoned. The errors leading to striking out of the appeal do not seem to be *mala fide*. In the case of **Zuberi Mussa Vs. Shinyanga Town Council, Civil Application No. 3 of 2007 (unreported)**, the Court of Appeal explained that: -

"Advocates are human and they are bound to make mistakes sometime in the course of their duties. Whether such mistakes amount to lack of diligence is a question of fact to be decided"

against the background and circumstances of each case. If, for instance, an advocate is grossly negligent and makes the same mistake several times, that is lack of diligence. But if he makes only a minor lapse or oversight only once and makes a different one the next time that would not in my view, amount to lack of diligence."

However, even after excusing the time spent in prosecuting the incompetent appeal, the applicant has a duty to account for the 30 days which lapsed after the ruling that struck out the appeal. It is not natural that after the appeal was struck out, next step would be adopted after lapse of the whole month.

As Mr. Benjamin, kindly observed, the learned advocate Mr. Mkilya and the applicant did not state, neither in the affidavit nor in addressing this court, when the learned counsel Mkilya was actually involved in this matter and how did they utilize the 30 days after striking out the appeal. I wish to peg a serious note herein, that, although the technical delay was to be excused, the legal principle that, a party must account for each day he delayed applies squarely and strictly soon after expiry of the excusable period of time. Thus from the day of ruling or order striking out the appeal to the day of instituting this application must be counted for by the applicant. This court is justified to rule that the applicant and his advocate were not diligent. The delay was caused by indolence which this court has no more grace to forgive.

Even the alleged illegality of the lower tribunals' decision, did not have any strength. I so rule based on the legal requirement that allegations of illegality or irregularity should be clear and vividly seen on face of record. Also, illegality or irregularity does not *ipso facto* earn the

right to extension of time. See the case of **Lyamuya Construction Company**. The Court of Appeal guided that, it should be of sufficient importance, apparent on the face of the record, not to be discovered by a long-drawn argument. Same has been maintained in a number of authoritative decisions, one of them is the case of **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015**.

Among the appellant's contention on illegality, is about the issue of *locus standi* of the respondent, which was contested. The same raises the need to examine the respondent's case from its institution, but it was raised at the appellate tribunal and resolved at page 3 – 4 of the judgment. It is on this aspect I accept Mr. Benjamin's contention.

Having so said and for the reasons so stated I find this application lacks merits. I proceed to dismiss this application with costs.

Order accordingly.

Dated at Morogoro in chamber this 28th day of October, 2022.



A handwritten signature in blue ink, appearing to read "P. J. NGWEMBE", is written over a large, faint watermark that says "ORIGINAL".

P. J. NGWEMBE

JUDGE

28/10/2022

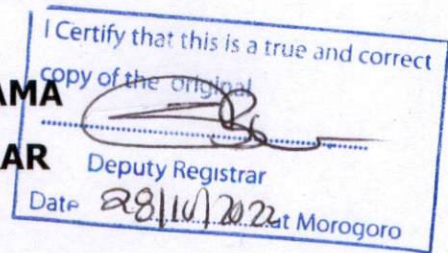
Court: Ruling delivered at Morogoro in Chambers on this 28th day of October, 2022, **Before Hon. J.B. Manyama, AG/DR** in the presence of Mr. Kilya David, Advocate for the Applicant and in the presence of Mr. Benjamin Jonas, Advocate for the respondent.

Right to appeal to the Court of Appeal explained.

SGD. HON. J.B. MANYAMA

AG/DEPUTY REGISTRAR

28/10/2022



ORIGINAL