

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. LAND APPLICATION No. 151 OF 2022**

*(Originates from Karatu District Land and Housing Tribunal in land application No.63 of 2018)*

**AKHAI SIASI.....APPLICANT**

**VERSUS**

**GINYAI GISULU.....RESPONDENT**

**RULING**

*Date of last order 21<sup>st</sup> November 2022*

*Date of ruling 02<sup>nd</sup> December 2022*

**BADE, J**

The Applicant herein filed this application praying for an extension of time to file his appeal against the decision of Karatu District Land and Housing Tribunal in Land Application No.63 of 2018 and any other relief that this court deems fit and just to grant. The Applicant moved this court under section 41(2) of the Land Dispute Courts Act, cap 216 [R: E 2019] by way of chamber summons supported by an affidavit of the applicant.

It is on record that, when the matter came for hearing on 21<sup>st</sup> November 2022, the Respondent did not object the application but rather he urged the

court not to give an order for costs if it grants the Applicant an extension of time.

In determining the Applicant's application, the court considered in summary the Applicant's submissions in chief as follows.

The Applicant submitted that, he is aware that he had to file the appeal within the period of 45 days since the date the decision of the trial tribunal was delivered on 24<sup>th</sup> November 2021 in Land Application number 63 of 2018. He further submitted that, he requested for the copies of judgment and proceedings on the 19<sup>th</sup> January 2022 but he was supplied with the same on the 16<sup>th</sup> May 2022.

The Applicant submitted further that, on the 28<sup>th</sup> January 2022 being aware of the imminent danger he was facing of losing time and becoming time barred, he decided to file an application for the extension of time at the High Court of the United Republic of Tanzania through Misc. Land Application No 07 of 2022, but the said Application was struck out for being incompetent. He argues further that, since he has now obtained the said copies, he has decided to refile this application because he is now able to prepare his appeal.

The Applicant's maintains that, since he cannot in any way be said to be the cause of such delay in causing the copies of the proceedings and judgement to be delayed, causing the delay in filing his appeal before the High Court, it is his prayer that the court grants him the extension of time to file his appeal as he did not act negligently or cause inordinate delay. He fortifies his stance that as per article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977 he is entitled to a fair hearing.

The issue for determination before this court is whether the application is meritorious

It is obvious from the Applicants submission and affidavit, the Applicant's has raised the fact that reflects a technical delay, and therefore the court finds itself to have a duty to put the facts to scrutiny to see if indeed there was a technical delay. In determining this application, this court is guided by the factors precedent for extension of time as established in the case of **Lyamuya Construction Co. Ltd vs Registered Trustees of Young Women Christian Association**, Civil Application No. 02 of 2010 (unreported), in which the Court laid some guidelines for the application for extension of time to grant as follows;

- i. That the Applicant must account for the whole period of delay*

- ii. *That the delay is not inordinate*
- iii. *That the Applicant must show diligence but not apathy, negligence or sloppiness of the action that he intends to take*
- iv. *If the court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged*

As observed earlier in the Applicant's submissions, his failure to file the appeal was caused by the delay of the trial tribunal to issue him with of judgment and proceedings copies, , it is my considered view that falls squarely with the guidelines as established by Lyamuya's case(**supra**), that there was no inordinate delay nor was there negligence, or sleeping over his right or sloppiness on the part of the applicant under such circumstances, but rather an obstacle which he could not overcome.

In the case of Salvant **K. A. Rwegasira v. China Henan International Group Co. Ltd**, Civil Reference No 18 of 2006 (unreported) the Court held that;

*"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 these circumstances an extension of time ought to be granted"*

In line with the above thinking, I subscribe to the Applicant's position that what transpired amounts to a technical delay hence the Applicant had nothing to do with it as he had no capacity to instruct the trial tribunal.

In the upshot, this application is hereby granted with the effect that the Applicant files his appeal within a period of 14 days from the date of delivery of this ruling. I also give no order to costs as prayed.

Ordered accordingly.

**DATED** at **ARUSHA**, on the 02<sup>nd</sup> December 2022.



A handwritten signature in blue ink, appearing to read "A. Z. Bade".

**A. Z. BADE**

**JUDGE**

A handwritten signature in blue ink, appearing to read "N".