

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

**(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC. LAND APPLICATION NO. 44 OF 2020**

(Originating from District Land and Housing Tribunal for Dodoma in Land Application  
No. 172/2020)

**YASIN SELEMAN ADAM.....APPLICANT**

**VERSUS**

**IBRA GENERAL INTERPRISES**

**TANZANIA LIMITED .....1<sup>ST</sup> RESPONDENT**

**THE CITY COUNCIL OF DODOMA .....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

13 & 27/10/2022

**KAGOMBA, J.**

On 13/10/2022 this Court heard the submissions by Mr. Gothard Mwingira, learned advocate for the applicant, who moved the Court to grant extension of time for his client, the applicant herein, to file his appeal out of time. The applicant intends to eventually overturn the ruling of the District Land and Housing Tribunal for Dodoma (henceforth "the Tribunal) dated 21/02/2020.

The application is made under section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and is supported by an affidavit sworn by Mr. Mwingira.

In his submission, Mr. Mwingira told the Court that the delay to file the intended appeal in time was caused by defects observed in the Drawn Order of the Tribunal. He submitted that the applicant had already filed, within time, his appeal No. 4 of 2020 but upon discovery of the defects in the Drawn Order, he prayed to withdraw it with a leave to refile. That, this Court (Hon. Siyani, J, as he then was) granted the prayer accordingly.

Therefore, it was Mr. Mwingira's argument that since the applicant had taken immediate steps to have the Drawn Order rectified, and the same had already been so rectified, the Court be pleased to grant the application as it did in **Tanzania Sewing Machine V. Njake Enterprises Ltd**, Civil Application No. 56 of 2007 (unreported).

Ms. Josephine Mnzava Paulo, learned advocate for the 1<sup>st</sup> respondent opposed the application. She gave four reasons: firstly, while the applicant was granted leave by Hon. Siyani, J (as he then was) to withdraw and later refile his appeal after rectification of the defective Drawn Order, as per records, the said Drawn Order was not yet properly rectified. Hence, she described the application as equal to putting a cart before the cow.

Secondly, since the applicant had filed the appeal in time but sought to withdraw it himself, the appeal was therefore not properly filed.

Thirdly, the case of **Tanzania Sewing Machine** (Supra) was distinguishable with the case at hand in that, in the case at hand, the applicant had not yet rectified the Drawn Order.

Fourthly, the applicant had not justified each day of the delay.

For the above reasons, she prayed the Court to dismiss the application with costs.

Ms. Nice Tibilengwa, learned State Attorney for the 2<sup>nd</sup> respondent also opposed the application. She submitted that the applicant had taken 262 days to file this application since the order of Hon. Siyani, J (as he then was) and that, he had not adduced sufficient reasons for such a long delay.

Ms. Tibilengwa further attacked the application for being filed even before the Drawn Order was rectified, hence a wastage of Court's precious time. She also prayed the Court to dismiss the application with costs.

In his short rejoinder, Mr. Mwingira addressed the question of putting the cart before the cow. He said that there had been rectification of the Drawn Order twice, but hastened to add that the remaining rectification would not affect this application. Regarding the requirement to account for the long delay, he rejoined that, in principle, the delay was caused by the Tribunal's fault. He prayed the Court to grant the application.

Having heard the above submissions by the learned counsels, the obvious issue for determination before this Court is whether the applicant has adduced sufficient reason or cause for the Court to grant the orders sought in the chamber application.

Records show that upon delivery of the Ruling of the Tribunal on 26/11/2020 in Application No. 178 of 2018, the applicant timely filed in this Court his Land Case Appeal No. 4 of 2020 on 7/1/2020. As submitted by Mr. Mwingira, the same was withdrawn with leave to refile after it was observed that the Drawn Order of the Tribunal was defective. The order for withdraw with leave to refile the appeal was made by Hon. Siyani, J (as he then was) on 9/6/2020 and this application was filed in this Court on 28/7/2020.

My perusal of the Drawn Order of the Tribunal has confirmed that the same has serious defects in that it does not show which orders were prayed by the applicant and which orders were finally made by the Tribunal. Records of the Court further reveal that Mr. Mwingira has been following up with the Tribunal for rectification of the Drawn Order, and a copy of the rectified Drawn Order which, however still has defects was availed to the Court. Looking at all these facts, I feel sorry for the applicant for the way the Tribunal drew its Order with serious shortfalls and how it keeps repeating the defects. It's high time the Tribunal should check its ranks and improve its service to the people, especially in the area of provision of certified copies of Judgment, Decrees and Drawn Orders.

Ms. Paulo and Ms. Tibilengwa have questioned the readiness of this application in the light of the fact that the Drawn Order is yet to be properly rectified. I appreciate their concern. It would be proper for extension of time to be considered after the Order was finally rectified. However, the Court has to separate issues. The matter before this Court for consideration is an application for extension of time to file an appeal and not consideration of

the appeal itself. Drawn Order is not a legal requirement for this Court to consider the application. What the Court would mind at this stage is whether there is good cause for the orders of time extension to be granted.

It is not disputed that the applicant had earlier filed his appeal in time. It is also not disputed that there were, and still are, defects in the Drawn Order of the Tribunal. I would add that, as the applicant's advocate has rejoined, such remaining defects will not prejudice either of the respondents. Mr. Mwingira being the advocate for the applicant in this matter is presumed to know that defects in the Drawn Order may affect the intended appeal. In a way, he has told this Court, not to worry about that.

Therefore, looking at this application in the eyes of justice, I think sufficient cause exist for the same to be granted. I accordingly grant the application. The applicant has 45 days to file his appeal. Costs to follow events.

**Dated at Dodoma** this 27<sup>th</sup> day of October, 2022.



  
ABDI S. KAGOMBA  
JUDGE