

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

MISC. APPLICATION NO. 42 OF 2022

(Arose from Land Appeal No. 07 of 2020; in the District Land and Housing Tribunal for Morogoro, at Morogoro; Originating from Mvuha Ward Tribunal, in Land Application No. 18 of 2019)

JOAKIM TADEI NYINGO APPLICANT

VERSUS

AUGUSTINO SELESTINE RESPONDENT

RULING

18th & 26th Oct, 2022

CHABA, J.

Before me, it is an application for an extension of time within which the applicant may be allowed to file an appeal out of time against the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT) in Land Appeal No. 07 of 2020 delivered on 28/09/2021. The application is made under section 38 (1) of the Land Disputes Courts Act [Cap. 216 R. E, 2019], Section 14 (1) of the Law of Limitation Act [Cap. 89 R. E, 2019] and any other enabling provisions of the law. It is supported by an affidavit deposed by the learned advocate for the applicant, Ms. Joyce Richard.

Briefly, the matter arose in this way: The applicant herein (the applicant at the trial Ward Tribunal) filed Land Application No. 7 of 2019 against the

respondent herein before the Mvuha Ward Tribunal, claiming that the respondent trespassed on his farmland located at Tununguo Village in Tununguo Ward, Morogoro Rural District within Morogoro Region. After the full trial, the trial Ward Tribunal delivered her judgment in favour of the applicant. Dissatisfied, the respondent herein appealed to the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Appeal No. 7 of 2020. Upon entertained the matter, the DLHT ruled that the Mvuha Ward Tribunal lacked territorial jurisdiction to entertain the matter since the land in dispute is located at Tununguo Ward. That being the case, the Ward Tribunal which was clothed with jurisdiction is Tununguo Ward Tribunal and not Mvuha Ward Tribunal as stipulated under section 10 of the Land Disputes Courts Act (Supra). Hence, acting under section 35 (1) (C) of the Land Disputes Courts Act [Cap. 216 R. E, 2016] (the LDCA), the DLHT quashed and nullified the proceedings, judgment, and Orders issued by Mvuha Ward Tribunal, and further gave an order to the effect that the respondent had to continue using the land in dispute. It appears that the applicant herein was aggrieved by the decision of the DLHT but he found himself out of time hence this application.

The supporting affidavit deponed by the learned advocate for the applicant, Ms. Joyce Richard contains substance that is indicated in the introduction part and paragraphs 1 and 2. The other paragraphs comprises reasons for the delays as shown in paragraphs 3, 4, 5, 6, and 7 which I will refer them in the course of determining this application.

When the application was called on for hearing, Ms. Joyce Richard,

learned advocate entered appearance for the applicant, while Mr. Elipidi Tarimo, also learned advocate appeared for the respondent. This application was argued orally.

Submitting in support of this application, the learned advocate Ms. Joyce Richard commenced by adopting the affidavit deposed by herself. She then continued to argue that this application has been filed under section 38 (1) of the Land Disputes Courts Act (Supra) and section 14 (1) of the Law of Limitation Act [Cap. 89 R. E, 2019] (the LLA). She further submitted that at first, there was an appeal which ended in favour of the respondent, e.g., Land Appeal No. 7 of 2020 before the DLHT whereby the respondent was declared a lawful owner. However, the applicant was unhappy and therefore on 21/10/2021, he wrote a letter before the DLHT expressing his intention to appeal. However, he didn't manage to secure the said copy of the judgment and decree. On 18/12/2021 the applicant wrote another letter reminding the DLHT to supply him with a copy of the judgment, but in vain. He continued to do so on 25/04/2022 and on 20/06/2022, but again in vain. On 23/06/2022 he was supplied with a copy of the judgment. Thereafter, the applicant was obliged to look for legal services in July, 2022 and finally the applicant found himself in the hands of the learned advocate, Joyce Richard for consultation. Upon scrutiny of the relevant documents, Joyce noted that already the applicant was out of time. Ms. Joyce underlined that the delay to file his appeal in time was beyond his capacity and was caused by DLHT. Placing reliance on the above submission, Ms. Joyce averred that the applicant has shown good cause why he delayed to file his

appeal. She further stated that, if the court will refuse to grant extension of time, the applicant will suffer a great loss. She finally prayed the court to consider the applicant's application as prayed so that he can be able to file the intended appeal in time.

Responding to the applicant's submission, Mr. Elipidi Tarimo firstly prayed to adopt the counter affidavit, and continued to submit that to a great extent had no objection to the instant application. However, had the following to state.

Though the applicant endeavoured on his part to obtain the copy of judgment within time as exhibited in the affidavit deposed by the learned advocate Ms. Joyce Richard as indicated at paragraphs 3 and 4 but the said copy of judgment was duly supplied to the applicant on 23/06/2022 and at the material time was not out of time as provided under section 19 (2) of the LLA (Supra) which provides clearly that the time spent for requesting a copy of judgment must be excluded. He highlighted that from 28/09/2021 to 23/06/2022 this time must be excluded. He stated that, basically the time began to run from 24/06/2022 in view of calculating the time sought for an extension of time. To buttress his argument, Mr. Elipidi Tarimo referred this court to the authority in the case of **Velerie Mcgiven Vs. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 at pages 10 - 11. He accentuated that, counting from 24th June, 2022 to 30th August, 2022 when this application was filed in Court, it is a total of 62 days, whereas the law provides for 45 days only. If at all the applicant had the intention to file his appeal, he was supposed to file his appeal on 7/8/2022 (within 45 days). The delay of 23 days has no sufficient

explanation, and the applicant's advocate did not advise her client properly. To back up his contention, the learned advocate cited the authority in the case of **Jubilee Insurance Company Limited Vs. Mohamed Sameer Khan**, Civil Application No. 439 of 2020 at pages 11, 12, 14 and 15 wherein the court held *inter-alia* that: -

"Once the applicant has filed an application for extension of time, then his or her duty is to account for each day of delays. But in this case, the applicant did not account for each day of delays.

He further argued that, the Court went on expounding that:

.. at page 14 ... from the above, it is therefore clear that not only the applicant has failed to account for delays but both the applicant and her advocate exhibited negligence and inaction. It should also be emphasised the negligence of an advocate or his ignorance of the procedure is not an excuse and does not constitute a sufficient cause for an extension of time".

From the above excerpt of the decision of the Court, Mr. Tarimo averred that neither the learned advocate for the applicant nor the applicant himself exposed sufficient cause to warrant this court grant for an extension of time. He therefore, prayed the court to struck out the application with costs.

To rejoin, Ms. Joyce Richard, mainly reiterated her submission in chief and added that section 38 (1) of the LDCA is clear that, any party who is aggrieved

by a decision or order of the DLHT in the exercise of its appellate or revisional jurisdiction, may within sixty (60) days after the date of the decision or order, appeal to the High Court. She continued that, the law is plainly clear that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired. She wondered to hear the counsel for the respondent that the applicant had only 45 days. Ms. Joyce continued to argue that even if the applicant would have obliged to file his appeal on the basis of 60 days, counting from 24th June, 2022 to 30th August, 2022; still the applicant was out of time for about 68 days.

Basing on the above submission, Ms. Joyce prayed the court to consider the applicant's prayer and allow it accordingly.

Having considered the rival submissions advanced orally by the parties and upon carefully gone through the chamber summons and the supporting affidavit, the question for determination is whether or not this application has merit.

Before I go further, I find it apt to start with the provisions of section 38 (1) of the Land Disputes Courts Act [Cap. 216 R. E, 2019]. The law provides that: -

"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court: Provided that, the High Court may for

good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.

(2) NA.

(3) NA.

[Emphasis is mine].

From the above excerpt of the provision of the law, it follows therefore that the court has been clothed with the discretionary power to grant an extension of time if beforehand there is sufficient reasons and good cause to warrant this court exercise her discretion. This principle of law has been stated in several cases including the cases of **Benedict Mumelio Vs. Bank of Tanzania**, [2006] 1 EA 227; **Bertha Bwire Vs. Alex Maganga**, (Civil Reference No.7 of 2016) [2017] TZCA 133; (20 November 2017); **Zuberi Mussa Vs. Shinyanga Town Council**, Civil Application No. 3 of 2007 (unreported). In **Bertha Bwire Vs. Alex Maganga**, (Supra) our Apex Court held inter-alia that: -

*"...It is trite law that extension of time is a matter of discretion on the part of the Court and that **such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case**".*

However, the term "**good cause**" or "**sufficient cause**" has not been specifically defined. But the courts have construed that good cause usually depends on the circumstances of each case. For instance, in **Abdallah Salanga**

& 63 Others Vs. Tanzania Harbours Authority, Civil Application No. 4 of 2001 (Unreported), the Court of Appeal of Tanzania (Mroso, JA., As he then was) observed that: -

"This court in a number of cases has accepted certain reasons as amounting to sufficient reasons. But no particular reasons have been set out as standard sufficient reasons. It all depends on the particular circumstance of each application".

As regards to the factors that may be considered as good causes or sufficient cause, the proposition was well articulated in the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees of Young Women's Christian Association Tanzania**, Civil Application No. 2 of 2010 (Unreported) wherein the Court held among other things that: -

"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 arbitrary. 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 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 also settled that, in an affidavit filed in court in support of the application, the deponent has a duty to provide reasons in the affidavit so as to enable the court to exercise her discretion. This proposition of the law was underscored by our Apex Court in the case of **The Registered Trustees of the Archdiocese of Dar Es Salaam Vs. The Chairman Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (Unreported) wherein the Court held *inter-alia* that: -

"...reason for failure to appeal on time must be given on affidavit not on submissions because submissions are not evidence."

Looking at the affidavit deposed by the counsel for the applicant and filed in court to support the application, the applicant accentuated that the delay to file his appeal in time was occasioned by the late supply of the certified copies of the judgment and decree from the DLHT. This ground has been highlighted in the affidavit at paragraph 4, which reads: -

"4. That, the applicant is aggrieved with the entire Judgement and Orders and immediately made a prayer at the said tribunal to which applied copies of judgment for the appeal purpose but

his effort have proved futile until 23/6/2022 when he got copies of judgment but the time for appeal lapsed. (Collectively Copies of the said letter are attached herein Marked LI leave is craved to refer the same as part of this application)".

As noted above, it is common ground that the impugned decision was delivered on 28/09/2021 and the law requires that the applicant was supposed to file his appeal within sixty (60) days from the date of the decision which expired on 26/11/2021. Giving reasons why he delayed to file his appeal within the prescribed time, the applicant asserted through an affidavit deposed by the learned advocate and reinforced by advancing her submission that the delays was occasioned by the late supply of the relevant documents, i.e., copies of the judgment and decree. As gleaned from the record, the applicant applied to be supplied with the copies of judgment and decree on 21/10/2021 and the same was supplied to him on 23/06/2022. Therefore, calculating the portion of time from the date of obtaining the copy of the judgment and decree on 23/06/2022 it means that sixty (60) days expired on 21/08/2022, thus the applicant delayed to file the intended appeal for about 69 days.

It has been decided in a number of cases that, a delay of even a single day must be accounted for. This position of the law was underscored by the Court of Appeal of Tanzania in **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (Unreported) where the Court had the following

to state, I quote:

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

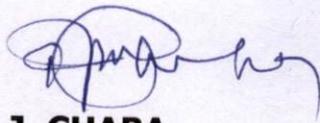
From the foregoing, I have endeavored to demonstrate the position of the law and court's decision in line with the instant application. In the circumstance of this case, it is my holding that the applicant failed to comply with the legal principles upon failing to account for delays of all 9 days as alluded to above. I agree with learned advocate for the respondent that, there was negligence on the part of the applicant's counsel.

As it was underscored by the Apex Court in the case of **Lyamuya Construction Company Limited** (Supra), in exercising my discretionary power to grant the orders sought by the applicant, I have taken into account the **good cause** in line with the rules of reason and justice abides by the circumstance surrounding the matter at hand. Indeed, I am satisfied that the applicant has failed to advance a good cause to convince me exercise my discretionary power.

Having so found, I find that this application is non-meritorious. It is hereby dismissed with costs. **Order accordingly.**

DATED at MOROGORO this 26th day of October, 2022.





M. J. CHABA

JUDGE

26/10/2023

