

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 76 OF 2020**

**(Originated from Land Application No. 20 of 2018 in the District Land and Housing  
Tribunal for Karatu at Karatu)**

**ESTA MANONGA.....1<sup>ST</sup> APPLICANT**

**LOHAY ABDUEL LOHAY.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ESTER LOHAY.....RESPONDENT**

**RULING**

**24/03/2022 & 21/04/2022**

**GWAE, J**

The applicants above plead this court for enlargement of time within which to file an appeal against the ruling of the District Land and Housing Tribunal of Karatu at Karatu in Application No. 20 of 2018 out time. The application is brought under the provision of section 41 (2) of the Land Disputes Courts Act Cap 216 Revised Edition, 2019 and section 14 (1) of the Law of Limitation Act Cap 89 Revised Edition, 2019. The application is accompanied by an affidavit sworn by the applicants and the same was strongly opposed by the respondent's counter affidavit.

When the matter came for hearing, the applicants were represented by the learned counsel, **Mr. Edmund Ngemela**, the respondent, on the other hand, did not enter her appearance, therefore, hearing of this application was ordered to proceed ex-parte.

Supporting his application Mr. Ngemela submitted that, the matter filed at the DLHT was struck out at the stage of preliminary objection on the reason that, the applicants had no locus standi and more so it is their contention that there is an illegality in the decision intended to be appealed against. Mr. Ngemela went further to state that the applicants initially filed an application of this nature but the same was withdrawn with leave to re-file. It was therefore his prayer that, this application be granted so that the applicants can be able to challenge the decision of the DLHT.

I have considered the application thoroughly particularly on the sworn affidavit of the applicants which lays the basis of this application. According to the relief sought, the applicants are seeking for enlargement of time to file an appeal out of the prescribed time. The provisions of the law cited by the applicants in moving the court that is section 41 (2) of the Land Dispute Courts requiring 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 to be filed to the High Court within 45 days after the date of the decision.

From the sworn affidavit, the DLHT's ruling intended to be appealed against, appears to have been delivered on 10/08/2018 whereas this application was filed on 24/09/2020. As a matter of universal principle, on applications for enlargement of time, a decision whether to grant or refuse applications of this nature is entirely in the discretion of the court which is to be exercised judiciously. Equally, according to the rules of judicial reason and justice, the overriding consideration being that, there must be sufficient or good cause to justify the court to extend time within which to file an appeal or revision or an application out of the prescribed period (See the decision in the case of **Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 1 of 2002 (Unreported)).

Therefore, the question to be determined by the court is, whether the applicants have established sufficient cause for this court to judicially exercise its discretion powers to grant the application. Apparently, the applicants' affidavit has not disclosed sufficient reasons for the grant of this application on reason that, reading from the affidavit, it is vividly revealed that the applicants have not given an account of the delay from the date they alleged to have been availed with the copies of the said ruling and proceedings. According to their averments, the said copies

were availed to them on 27<sup>th</sup> September 2018 whereas this application has been filed in this court 24/09/2020 almost two years later. The affidavit establishes that (at paragraph 12 of the sworn affidavit) from 27<sup>th</sup> to 31<sup>st</sup> October 2018, the applicants' advocate was preparing documents for filing to the court, this court wonders as to whether the said documents were still under preparation from that time till 24/09/2020 when they were presented for filing in this court.

The requirement to account each and every day of delay has been consistently stressed by our courts in a number of decisions for instance in **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, (unreported-CAT) in **Dar- es-salaam City Council v. S. Group Security Co. Ltd**, Civil Application No. 234 of 2015 (unreported) and in **Lyamuya Construction Company LTD v. Board of registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported-CAT). In **Sebastian Ndaula** the Court of Appeal of Tanzania stated that;

"The position of this court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay."

In our instant application, there is absolutely nothing explained in the applicants' affidavit with regard to the time between 31<sup>st</sup> October 2018

of administration of estate of the late **Lohay Hyara Margwe** who died in 1992. More so, his plea at paragraph (a) (1) that the suit land was the property of the said deceased. It is therefore my considered view that, the alleged illegality is not apparent since the suit land was the belonging of the deceased as pleaded then the replaced them in the capacity of new administrator.

Consequently, I find that, the applicants have not given sufficient cause to justly and fairly enable this court to grant the relief sought. Accordingly, this application for extension of time is devoid of merit. Each party shall bear its own costs.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**21/04/2022**