

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 56 OF 2021

(Arising from Misc. Land Application No. 283 of 2019, originating from Misc. Land Application No. 222 of 2018 of the District Land and Housing Tribunal for Kigoma and Land Case No. 6 of 2017 of Muzye Ward Tribunal))

LEONARD STEPHANO-----APPLICANT

VERSUS

NGOMA SAIMONI MICHAEL-----RESPONDENT

RULING

6thApril & 20th April, 2022

F. K. MANYANDA, J

A delay of 11 (eleven) days has made the Applicant to come to this Court praying for extension of time within which to lodge a reference from a ruling of the District Land and Housing (DLHT) for Kigoma in Taxation/Misc. Land Application No. 283 of 2019. The impugned ruling was delivered on 11/10/2021 and this application was filed on 12/11/2021



making a total delay of 31 days if the 21 grace days are deducted it makes 11 days of delay.

The Application is made under Order 8(1) for the Advocates Remuneration Order GN No. 264 of 2015. It is made by way of a chamber summons supported by an affidavit sworn by the Applicant, Leonard Stephano.

It is countered by the Respondent, Ngoma Saimoni Michael, who swore a counter affidavit.

The brief background of this matter as gleaned from the affidavit and counter affidavit is that way back in 2017 the Applicant filed land case No. 6 of 2017 at Muzye Ward Tribunal for ownership of a piece of land in dispute between them. The said trial Ward Tribunal decided in favour of the Respondent, the Applicant was bemused, therefore preferred an appeal to the DLHT. However, as he was out of time, he chose to file an application for extension of time in Misc. Land Application No. 222 of 2018 which was dismissed for want of merit. As a result, the Respondent filed Misc. Land Application No. 283 of 2019 for taxation of costs. On 11/10/2021 the DLHT delivered its ruling taxing costs of Tshs. 1,608,000/=.

The Applicant is aggrieved by that ruling hence this reference.

Hearing of this matter was with leave of this Court, disposed by way of written submissions, a schedule to which both parties complied with. Mr. Ignatius R. Kagashe learned Advocate, drew and filed the submissions for the Applicant and those of the Respondent were drawn and filed by Mr. Eliutha Kiviyiro, learned Advocate.

Submitting in support of the Application Mr. Kagashe argued that as deponed under paragraph 7 of the affidavit, the Applicant sought to refer the ruling of the DLHT to this court immediately after its delivery. That he applied to be supplied with the requisite copy immediately the same day the ruling was delivered on 11/10/2021. However, the same was supplied on 3/11/2021 well out of the 21 days' time limit.

He submitted on the position of the law in extension of time citing the case of **Mumello vs BOT**, [2006] EA 227 that extension of time is a discretion of the court. He also submitted on the principle on extension of time that the applicant must show good or sufficient cause for the delay.

He cited the case of **Administrator General vs Mwanaarabu Rajabu and others** [1980] TLR 303.

Then as to what amounts to good or sufficient cause, the counsel cited the cases of **Tanga Cement Co. Ltd vs Jumanne D. Masangwa and Another**, Civil Application No. 6 of 2001 (unreported) where it was held

that the term "good or sufficient cause" is not yet defined but all relevant factors are to be taken into account such as length of delay, reasons for delay, whether there is arguable case and degree of prejudice to the other party if time is extended.

He submitted that the Applicant vindicated with promptness and diligence in taking action.

According to the counsel's views; the delay of 11 days is not inordinate.

He relied on the authorities in the cases of **Patrick Mogolosi Mongela vs the Board of Trustees of the Public Service Pension Fund**, Civil Application No. 1999/18 of 2018 in which a delay of 12 days was regarded by the Court of Appeal not inordinate. He also cited the case of **Shanti vs Hindoche and others**, [1973]

Mr. Kagashe also informed this court that there is no legal requirement in the laws regulating procedures in the DLHT that a party wishing to appeal or make an application should request a copy of the decision in writing.

He was of the views that the same may be requested orally or in writing.

He casted the blame for late supply of such copies to the registries contending that victims should not be victimized for inaction by the registries of courts and tribunals who fail to inform them to collect their copies.

He was of the views that the Applicant collected his copy on 3/11/2021 because he was not so informed. To him, the Applicant had established good or sufficient cause for extension of time. He prayed the application to be granted with costs.

On his side, Mr. Kiviyiro submitted opposing the application arguing that the evidence averred in paragraph 7 does not establish good or sufficient cause for delay. Mr. Kiviyiro submitted that the impugned ruling was delivered in the presence of both parties on 11/10/2021, and copies were ready for collection the very day. He also contended that there is no evidence of the Applicant requesting to be supplied with any copy either orally or in writing.

The counsel conceded to the position of the law in matters of extension of time as stated in **Mumello's case (supra)** and **Mwanaarabu Rajabu's case (supra)**. He also conceded on the position of the law in **Ngao Godwin Losero's case (supra)**. However, he pointed out that the 8 days delay in those cases was justified because cogent reasons were given while in this matter there are no such cogent reasons. The Counsel was of the views that the delay by the Applicant was sheer out of negligence which is not good or sufficient cause to warrant extension of time. He cited the case of **Esau Chomo vs Hamad Salim**, Misc. Land Application No. 29 of 2020 (unreported) to support his argument.

Mr. Kiviyiro didn't end there, he also attached the application from another angle arguing that the Applicant's affidavit as well as his submissions failed to establish due diligence and good faith as basis for enabling this court exercise its discretion in extension of time.

Lastly, Mr. Kiviyiro argued that the Applicant ought to have obtained an affidavit from an officer of the registry to support him in absence of any written proof of the date of supply of the impugned ruling. He also relied in the **Santi vs Hindoche's** case (supra)

He condemned the Applicant for sitting at home and dry waiting to be called instead of following up the copy, he prayed the Application to be dismissed with costs for want of merit.

As there is no rejoinder, that marks the end of the submissions by the counsel. I am thankful to the Bar, for the Counsel with the usual zeal and eloquence have discharged their duties.

In this matter, the main issue is whether this application is meritorious.

In the first place I agree with the counsel for both sides on the position of the law in extension of time to do an act where time is prescribed. That among the criteria looked at include but not limited to, length of the delay reason for delay, the prejudice to the opposing side is likely to suffer, likelihood of success of the matter for which the application is made,

whether there are legal issues involved such as irregularities in the matter for which application is made.

There is plethora of authorities on this position of the law which include the cases cited by the counsel, the case of **Mumello vs the Bank of Tanzania** (supra) **Administrator General vs Mwanaarabu Rajabu and others** (supra), **Tanga Cement Company Ltd VS Jumanne D. Maswagwa and Another**, (supra), and I may add the famous case of **Lyamuya Construction Company Ltd vs Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 unreported, to mention a few.

In the latter case the Court of Appeal expounded the criteria for extension of time as follows:-

- 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 intended to take;*
and
- d. If the court feels that there are sufficient reasons for delay in that the applicant was waiting for copies for the impugned decision after giving a request for the same to the registry of the trial court.*

e. If the court feels that there are sufficient reasons/such as the existence of a point of law of sufficient importance such as illegality of the decisions sought to be challenged.

Mr. Kiviyiro opposed that argument contending that there is no evidence showing that the Applicant applied for the copies of ruling and drawn order for him to make this reference. Moreover, the Counsel argued that the said copies were ready for collection shortly after ruling delivery, the Applicant was negligent for his failure to collect the same.

I have dispassionately considered this piece of argument. My perusal of the record I found as a matter of fact, it is true that the ruling was ready for collection on the very day of its delivery. However, there is also no indication on the record that the Applicant was so informed though there is also no indication also that the Applicant applied for the same on the delivery day.

The Applicant in his affidavit sworn that he applied for the copies he stated as follows: -

"7 That, I timely applied for the ruling in order to prefer a reference to this Honourable Court but unfortunately, by the time I was supplied with the impugned ruling on 3/11/2021, the

statutory 21 days of filing a reference to this court had expired...”

As it can be seen, in the said paragraph, there is no explanation on the method used to make the application for the copy and how the same was supplied to him.

The Counsel for the Respondent argued that the copy of the ruling was ready for collection the same day and his client, the Respondent, collected it on the 10th days after delivery. The Counsel didn't explain how and when his client become aware of readiness for collection of said copy; it seems he meant that his client was making a follow up; hence the Applicant also was required to do the same.

As I said above in this matter there is no indication on the date that the copy of the ruling was ready for collection. Each party obtained a copy on its own, upon approaching the registry.

While the Applicant says obtained the copy of the ruling on 3/11/2021 a day after expiry of the time, the Respondent obtained after delivery of the ruling.

In my considered views the difference between the date of collection of the copy of the ruling is based on the date each one approached the

registry for collecting the same. There is no evidence showing that they were formally or informally informed about its readiness for collection.

While the Applicant approached the registry on 3/11/2021 and collected it after paying the requisite fee, the Respondent did that on 21/10/2021. Since none of them was informed, then each one, to me, followed up for the copy at his own time.

The Respondent cannot condemn the Applicant for none follow-up and vice versa.

The time for delay of 11 days is as explained by the Applicant, was occasioned due to time spent waiting for supply of the copy of the ruling. The Applicant acted with promptness after obtaining the copy hence filed this matter in 11 days which in my opinion and the authority in **Patrick Mogolosi Mongela vs the Board of Trustees of the Public Service Pension Fund**, (supra), is not inordinate.

In the result I find that the application has merit.

Before I pen off Mr. Kagashe blamed the registry for not informing the applicant about collection of the ruling copies when the same were ready. I think it is unfair to condemn the registry alone while the Applicant also contributed her non-acting by failing to make follow-up. It is a realistic practice though not backed by law that a person preferring an appeal is

expected to make follow up to the concerned court for the requisite records. The Court of Appeal said so in the case of **Transcontinental Forwarders Ltd vs Tanganyika Motors Ltd**, [1997] TLR 328 where it was stated as follows: -

"I wish to say only that reminding the Registrar after applying for a copy of the proceedings etc. and copying the request later to the other party may indeed be the practice and realistic thing to do, but it is not a requirement of the law". (emphasis added)

In my firm opinion, a party who applies for copies of proceedings for appeal purposes is also, as a matter of realistic practice, required to make a follow up. Therefore, I don't sail in one boat with Mr. Kagashe position.

Having said so and as already found above, this application has merit, I do hereby grant extension of time within which for the Applicant to file a reference for 21 days from the date of this ruling. Costs to be paid by the Respondent. It is so ordered.




Sgd: F. K. Manyanda

Judge

20/4/2022