

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

MISC LAND APPLICATION NO. 11 OF 2021

(C/F Land Application No. 87/2017 at Karatu Land and Housing Tribunal)

JOHN GWANGWAY.....APPLICANT

VERSUS

PATRID HWAU DITO.....RESPONDENT

RULING

27th April & 06th May 2022

TIGANGA, J:

In this application the applicant John Gwangway Gini moved this Court under Section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E. 2019] seeking for extension of time to file an appeal out of time to challenge the decision of Land Application No. 87 of 2017 decided by Karatu District Land and Housing Tribunal on 04th December, 2020. Together with that substantive prayer the applicant also seeks for any other relief which this Honourable deems fit and just to grant.

The chamber summons was supported by the affidavit sworn by the applicant, in which he deposed the reason for his delay. He deposed that, he was not supplied with the copies decision immediately after the

decision was delivered, neither was he supplied with the copy of the decree and the proceedings. He said, the judgment was delivered on 04/02/2020, but the same was supplied to him on 04/01/2021.

The application was opposed by the respondent, by filing off the Counter affidavit sworn and filed by the respondent in which he said that the applicant was reluctant to file the appeal for reasons best known to himself.

Furthermore, he deposed that at the time when the applicant was supplied with the copy of judgment and decree he had 15 days to process and file the appeal. However, according to him, reading the affidavit, no reason was assigned of the delay from 04/01/2021 to 24/02/2021, when the application at hand was filed. Therefore, the applicant has no good cause for the delay for the court to exercise its discretion to enlarge time within which to lodge an appeal.

The application was heard orally, when parties appeared in person fending for themselves. The applicant reiterated the content of the affidavit filed in support of the application, he said after the judgment was delivered on 04/12/2020, he on 10/12/2020 filed the application for copies of judgment, decree and proceedings, although he made follow-up, he was not immediately supplied with the copies of the documents he

requested, but he was on 04/01/2021 supplied with the copy of the judgment alone. The copy of the decree was supplied on 05/02/2021. Following his supply of the two documents, on 11/02/2021 he engaged an Advocate who filed this application on 24/02/2021. The applicant submitted further that, since he could not have filed an appeal without a copy of the decree, then he had to await up to when the decree was supplied to him. Last is that, when the application was called for hearing, he had never been supplied with the copy of the proceedings.

In reply submission, the applicant opposed the application and submitted that, he objected the application because it was filed out of time and there is no reason as to why the applicant failed to tell the court as to why the applicant did not file it in time.

In his view, the delay was due to laziness as he was informed that the applicant has never fallen sick or involved in accident which would have prevented him from filing the appeal in time. He asked the Court to refuse the application and let him to go on to execute the decree.

In rejoinder, the applicant reiterated what he said in the submission in chief. He said the application is really out of time. He admitted not to have been involved in accident and has never fallen sick. He asked for the court to allow his application with costs.

That being the submission by both parties, it should be recited here, that under section 41 (2) of Land Dispute Courts Act (supra) the Court has powers to extend time to appeal in land cases originating from the District Land and Housing Tribunal, upon good cause shown.

This powers is discretionary, but the discretion must be exercised judiciously. The judicious exercise of such powers means, that there must be reasons given before the court can exercised such powers tom extend time.

The issue of extension of time is not a virgin ground, in our jurisdiction, it has been a subject of the court decision in a number of cases, one of the case is Lyamuya construction Company Ltd vs The Board of Registered Trustee of the Young Christian association of Tanzania, Civil Application No. 02 of 2020- CAT Arusha. In that case it was held inter alia that, for a person to be entitled to the extension of time, he must as a matter of law show good cause for delay.

Now, what amount to good cause has not been statutorily defined. However, case laws have defined the term. Of help is the case of **Lyamuya Construction Company Ltd vs The Registered Trustee of Young Women's Christian Association of Tanzania**, (supra) in which the Court of Appeal of Tanzania reiterated the already propounded

principle which gives the guidelines to be fulfilled by the applicant before the applicant has been entitled to the extension of time. These guidelines are as follows;

- a) The Applicant must account all days of delay,
- b) The delay should not be inordinate,
- c) The applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,
- d) If the Court feels that there is existence of a point of law of sufficient importance, such an illegality of the decision sought to be challenged.

In this case, the applicant has relied on the ground of exclusion of days for obtaining the copies of judgment and decree as stipulated under section 19 (1) of the Law of Limitation Act [Cap 89 R.E. 2019].

Under the above referred to provision, the Court must, while counting days for purposes of filing an appeal or application, should excludes days in which the applicant spends in obtaining for copies of judgment and decree.

In this case, the applicant has relied on exclusion principle that after delivery of the judgment the applicant was not supplied with the same

immediately, instead he was supplied with the judgment on 04/01/2021 while the decree was supplied to him on 05/02/2021. However, despited being supplied with these relevant copies, he did not file the said appeal or application immediately, he filed the same on 24/02/2021. The reasons he gave as to why he delayed were that he had to hire an Advocate to prepare the document for him.

If we are to agree that the provision of Section 19 (1) of the Law of Limitation Act (supra) is applicable, then must be counted from 05/02/2022 and counting from that date the applicant cannot be said to have been inordinately delayed. That said, I do hereby allow the application and extend time for 14 days from today for the applicant to file his appeal before this court.

Taking into account the nature of the matter, each party to bear his own costs.

It is so ordered.

DATED at **ARUSHA** this 06th day of May, 2022.




J.C. TIGANGA
JUDGE