

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 55 OF 2020

(C/F Land Application No. 113 of 2017 at Karatu District Land and Housing Tribunal)

BI. NUNUGHA LABU GEWE.....APPLICANT

VERSUS

PARMI DANIEL GOBRE.....RESPONDENT

RULING

02/12/2022 & 23/03/2022

GWAE, J

The applicant, Bi. Nunughai Labu Gewe has moved this court under section 38 (1) of the Land Disputes Courts Act Cap 216 Revised Edition, 2019 seeking an indulgence of the court to exercise its discretion to enlarge time within which to file her appeal out of time against the decision in Land Application No. 113 of 2017 filed in the Karatu District Land and Housing Tribunal (trial tribunal). The application is supported by an affidavit deposed by Patrick G. M. Maligana the applicant's counsel and resisted by an affidavit in reply deposed by Parmi Daniel Gobre.

Brief facts of this application are best captured in the affidavit of the applicant's counsel where it is stated that, the applicant herein was the applicant in Land Case No. 113 of 2017 before the trial tribunal where she lost her case. Being dissatisfied, the applicant is desirous to challenge that decision however for the reasons that she was an old woman and facing financial constraint in engaging an advocate for representation, she found herself out of time in filing her appeal.

When the application was called on for hearing, the applicant was duly represented by advocate Patrick Maligana, whereas the respondent was represented by Mr. Simon Shirima, learned advocate.

Arguing in support of the application Mr. Patrick submitted that, the applicant's delay is of three months and nine days and the reason for the delay is due to poor life of the applicant and that she is too old (90 years) and therefore she was unable to engage an advocate to assist her. He went on stating that there are illegalities in the decision intended to be appealed against and that the applicant being ineloquent in Swahili language she was not provided with a translator and therefore she was denied her fundamental right being heard. For the reasons stated, the applicant urged this court to grant the application.

The respondent, on the other hand, submitted that the applicant has not given sufficient cause for the court to grant the application. Mr. Simon went further to state that; the applicant has not accounted each day of delay which is a fundamental principle in granting applications for extension of time. Furthermore, on the allegation that the applicant was unable to engage an advocate, the respondent was of the view that the allegation is baseless taking into consideration that during the trial of the case the applicant had legal assistance who could also assist her on her appeal or alternatively she could have appeared in person.

As to the allegation that there are illegalities in the decision intended to be appealed against, the respondent submitted that the same has no basis as it was not stated in the applicant's affidavit. Basing on his argument he prayed this application be dismissed with costs.

It is settled law that applications for extension of time will only be permitted if applicant has shown good cause to warrant the court exercise its discretion to extend time. Good cause including promptness of filing an application for extension accounting for each and every day of the delay or demonstrating any illegality in the decision or order.

Given the above position of the settled law, the question which pops up at this juncture is; has the applicant shown good cause for the delay to legally enable the court to exercise its discretion in granting the sought extension of time? The applicant through the affidavit of her counsel has brought an explanation that the cause of her delay was on financial constraint due to poverty and the fact that she is an old woman, therefore she was unable to timely engage an advocate present her memorandum of appeal to the court. Mere assertions that a party to proceedings has failed to file either an application or appeal or revision within the prescribed period due to his dotage or poverty, in my considered opinion, do not constitute any sufficient cause to extend time.

Poverty or economic hardship as a sufficient reason for the grant of an application for extension of time was well elaborated by the Court of Appeal in the case of **Yusufu Same and Another v. Hadija Yusufu**, Civil Appeal No. 1 2002 (unreported) where it was stated that;

“As for the period from 29.11.1996 when the application for leave was dismissed by Bahati, J up to 3.1.1997 when the application leading to this appeal was lodged, the explanation by the respondent is based mainly on her numerous shuttles between Dar es Salaam where the court records were and

Moshi where her counsel was based, coupled with poverty. We are aware that financial constraint is not sufficient ground for extension of time (See **Zabitis Kawuka vs Abdui Karim** (EACA) Civil Appeal No. 18 of 1937). But in the circumstances of this case at hand, where the respondent was a widow, depending on legal aid, her plea of financial constraint cannot be held to be insignificant."

As observed in Yusufu Same's case (supra) in the quotation reproduced above, financial constraints may not be a sufficient ground for extension of time. However, as observed in the same quote, there are exceptional circumstances when it can constitute a sufficient cause. In that case, the person seeking extension of time was a widow and she on legal aid. It was observed that, in such circumstances, her plea of financial constraints could not be held to be insignificant. The instant application is distinguishable from the above quoted case in the sense that it is not established as to how the applicant was able to pursue her application before the trial tribunal but she subsequently failed to file her appeal within time.

Similarly, the applicant's assertion that she is an old woman is insufficient cause as it is not a general rule that old people are all poor or cannot do things timely. I am of the thought that, the applicant ought to have gone further explaining the extent of her poverty which she alleges to

have contributed by her old age. I am saying so because even the respondent in his submission argued that, in the tribunal the applicant had legal assistance and therefore the allegation that she was poor to engage an advocate is baseless unless the respondent's counter affidavit was contested by filing a replying affidavit to that effect. I have also considered the length of delay (More than a period of 45 days after exclusion of available period of appealing to the court that is 45 days as the decision subject to the intended appeal was delivered on the 6th March 2020 whereas this application was filed on the 15th day of June 2020.

The applicant has also argued that, there are points of illegalities in the decision intended to be challenged, the learned counsel went further to explain the said illegality that the applicant was not accorded the right to be heard as she was not familiar with Swahili language. Nevertheless, as correctly submitted by the respondent that the allegation on illegality was vividly not pleaded in the applicant's affidavit. An affidavit being evidence in substitute of oral testimony, it therefore follows that, the alleged point of illegality ought to have pleaded or reflected in the affidavit and not in her written submission since submissions do not constitute any evidence in law except guidance or elaborations and law. In **Registered Trustees of the**

Archdiocese of Dar es Salaam vs. The Chairman, Bunju Village Government & 11 Others, Civil Appeal No. 147 of 2006 where it was held that;


“...submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence.”

Since this issue of illegality was not pleaded in the applicant's affidavit, the same cannot be raised in course of presenting written submission. Equally, the court is not justified to consider the same. Even if I were to consider the same yet the alleged illegality ought to be apparent.

In the upshot, the applicant's application is dismissed for want of sufficient cause. The applicant shall bear costs

It is so ordered.




M. R. GWAE
JUDGE
23/03/2022