

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LAND DIVISION
AT MOSHI

MISC. LAND APPLICATION NO. 23 OF 2021

(Arising from original Land Application No. 126 of 2014 of the District Land and Housing Tribunal of Moshi at Moshi.)

ANNA JOHN.....1ST APPLICANTS

HASSAN MOHAMED.....2ND APPLICANT

SWALEHE MBWANA.....3RD APPLICANT

SAFIEL NGEREKA.....4TH APPLICANT

VERSUS

GEBRON P. MSHIU..... RESPONDENT

RULING

22/2/2022 & 08/3/2022

SIMFUKWE, J.

This is an application for extension of time to file an application for leave to appeal out of time against the decision of Moshi District Land and Housing Tribunal. The application has been preferred under **Section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019.**

The application is supported by the joint affidavit of the Applicants Anna John, Hassan Mohamed, Safiel Ngereka and Swalehe Mbwana; and contested by the Respondent's counter affidavit.



The matter was ordered to proceed by way of written submissions on request from the learned counsels of both parties. The applicants were under the service of Ms Greta Msuya learned counsel while the respondent enjoyed the service of Mr. Martin Kilasara learned counsel.

In their joint affidavit the Applicants have advanced reasons for delay in filing their appeal is delay supply of copy of judgment and record of proceedings. That, after being aggrieved by the decision of the Honourable Tribunal dated 3rd October 2019, they wrote a letter requesting for copy of judgment and record of the proceedings on 08th October, 2019. The said documents were supplied to them on 27/3/2020 five months from the date of their request. Thereafter, they filed two Miscellaneous Applications, thus No. 17 and 25 of 2020 which were ordered to be withdrawn in order to file one application to avoid multiplicity of applications. Then, they filed Misc. Application No. 72/2020 which on 25th June 2021 was found to be incompetent and struck out. On 22/7/2021, the instant application was filed.

In their written submissions the applicants reiterated the contents of their affidavit which I have summarized herein above and insisted that the reason for the delay was failure of the District Land and Housing Tribunal to supply necessary documents to enable them to file their appeal.

The learned counsel for the applicants contended that, for the court to grant extension of time, it is discretionary which must be excised judiciously and according to the rule of reason and justice and not according to private opinion or arbitrarily. Reference was made to the case of **Lyamuya Construction Company Limited Vs Board of Trustees of**



Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010. (Unreported)

Concerning what constitutes good cause, the learned counsel for the applicants cited the Court of Appeal case of **Regional Manager, TANROADS Kagera Vs Ruaha Concrete Company Limited, Civil Application No. 95 of 2007**, (unreported) in which the following was observed in respect of what constitutes sufficient cause:

"What constitute sufficient reason cannot be laid down by any hard and fast rules. This must be determined by (sic) reference to all the circumstances of each particular case. This means that the applicant must place before the court materials which will move the court to exercise its judicial discretion in order to extend time limited by the rules."

Supporting their reason for the delay, the applicants referred to the case of **Mary Kimaro Vs Khalifan Mohamed [1995] TLR 202**, in which the court accepted delay to be supplied with drawn order and ruling as a good cause for the delay.

On the basis of the above decision, the applicants submitted that they have shown good cause for the delay to file their appeal. That, for interest of justice, it will be prudent and proper to grant the prayer prayed, or else the family of the applicant will suffer irreparable loss as they depend on properties built on the land in dispute.

In his reply, Mr. Kilasara for the Respondent prayed to adopt the counter affidavit of the respondent to form part of his submission.

On the reason for the delay advanced by the applicants that they could not



file their appeal in time due to late supply of necessary documents, Mr. Kilasara submitted that that assertion was frivolous, unfounded and grossly misleading. He conceded that copy of judgment and decree are relevant documents for purposes of appealing from the Land Tribunal to the High Court. He added that, as per the records, the said copies of judgment and decree were certified, availed to the parties and were ready for collection since 28th November, 2019. Thus, the Tribunal cannot be condemned as its records are self- explanatory.

Mr. Kilasara submitted further that it should also be noted that on 06th March, 2020 the 4th applicant herein vide Misc. Land Application No. 17 of 2020 solely sought in this court for extension of time to appeal against the decision of the tribunal. However, the said application and the application of another applicant were withdrawn on 15/10/2020. Thus by 06/3/2020 those copies were already availed to them. On the other hand, it was submitted that, the respondent was diligent in following up those copies and the same were supplied to him on 03rd February, 2020. Receipt evidencing the same was annexed to the counter affidavit of the respondent, while the applicants did not annex any receipt from the tribunal indicating the date and fees paid for those copies so as to enable this court to make an informed decision. Mr. Kilasara commented that, there was no shred of proof apart from mere assertion that they were supplied those copies on 27th March 2020 as they try to insinuate. It was submitted further that, in absence of any receipt or a duly certified copy of decree and judgment showing when the applicants were truly supplied with those copies, the purported allegations that the said copies were available to them for the first time on 27/3/2020 is indeed frivolous, unfounded and grossly misleading.

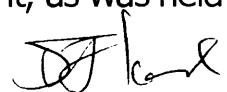


Mr. Kilasara went on to submit that the applicants were never prevented by any sufficient cause to lodge their appeal within the prescribed time. That, the purported allegation of late supply of necessary documents is unfounded and used as scapegoat to cover up their misdeeds and lack of due diligence to pursue the purported appeal.

The learned counsel for the respondent also alleged that the applicants had not accounted for each day of delay to warrant this application. He gave an example of six days between 03/10/2019 when the decision appealed against was delivered and 09/10/2019 when they applied for copies. 90 (ninety) days between 28/11/2019 when copies were availed and 06/3/2020 when the first application for extension of time was sought, and twelve (12) days between 15/10/2020 when the first applications were withdrawn and 27/10/2020 when the second attempt (Misc. Application No. 72/2020) was made, Or twenty-eight (28) days between 25/6/2021 when the second application was struck out and 22/7/2021 when this third application was filed. To cement his argument, Mr. Kilasara referred to the case of **Lyamuya Construction Co. Ltd** (supra) in which the Court of Appeal held that:

"The Applicant must account for all the period of delay, the delay should not be inordinate; the Applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that intends to take."

It was submitted further that in the absence of the account for the days of delay this application is unwarranted and incompetent before this court. That, this is a fourth application for extension of time to appeal between the parties herein; indeed, the applicants have not been diligent, as was held in



the case of **Hamis Babu Bally vs Judicial Officers Ethics Committee and Others, Civil Application No. 130/01 of 2020.**

In conclusion, Mr. Kilasara noted that, since 1988 the Respondent is the lawful absolute registered owner of the suit property, to wit Plot No. 10, Block 'E', Section V within Moshi Municipality with certificate of title No. 14767. That, the applicants are trespassers and squatters on the suit property and the claim for irreparable loss is frivolous and farfetched. On the other hand, the applicants' continued forceful occupation thereof further prejudices the respondent to develop and enjoy quiet possession, hence further delay the ends of justice. Under such circumstances, there is no any sufficient cause advanced by the applicants to warrant the grant of this application or at all an account of each day of delay given. Mr. Kilasara was of the view that the application is devoid of merits and ought to be dismissed in its entirety with costs.

After considering the joint affidavit of the Applicants, the counter affidavit of the Respondent and submissions of both parties, the issue for determination is ***whether the applicants have established sufficient cause for their delay to file their appeal.***

It is trite law that granting an application for extension of time is in the discretion of the Court on condition that the applicant must establish sufficient cause for the delay and account for each day of delay. There are number of Courts of Appeal decisions to that effect. In the case of **Karibu Textile Mills Limited vs Commissioner General, Tanzania Revenue Authority Civil Reference No 21 of 2017**, the Court of Appeal at page 10 of its ruling held that:



*"It is settled that extension of time is a matter of discretion on the part of the court and such discretion must be exercised judiciously and flexibly with regard to relevant facts of the particular case. Admittedly, it has not been possible to lay down an invariable definition of good cause so as to guide the exercise of the court's discretion. **Nevertheless, the Court has consistently looked at a number of factors such as the reasons for the delay, the length of the delay, whether the applicant was diligent, the degree of prejudice to the respondent if time is extended."***

[emphasis added].

In this application, on the outset the length of delay is inordinate, the applicants have not been diligent and the reason for the delay lacks support from what have been deposed by the applicants in their joint affidavit as well as the written submissions of their learned counsel. With due respect, I find that the circumstances of this case refrain me to grant the application for the reasons which I will state hereunder.

It is evident from the attached copy of decree that the same was issued on 03rd January, 2020. In their joint affidavit the applicants alleged among other things that they were supplied with the copy of judgment, decree and proceedings on 27/3/2020. At the same time, they alleged that their first two applications were filed on March, 2020 which were filed separately. On paragraph 9 of the affidavit the applicants deposed that, adhering to the order of filing the application jointly, on 05th April, 2020 they filed another application. As correctly noted by the learned counsel for the respondent, it seems that the applicants were availed with the said

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documents earlier than alleged by them. Misc. Land Application No. 17/2020 filed by the 4th applicant on 06/3/2020 contradicts with what has been deponed at paragraph 7 of the joint affidavit of the applicants that the documents were supplied to them on 27/3/2020 while Misc. Land Application No. 17/2020 had already been filed. On the outset, the reason for the delay advanced by the applicants is unfounded on the basis of their own contradictory statements. On top of that, the Applicants have been filing incompetent applications repeatedly prior to the instant application.

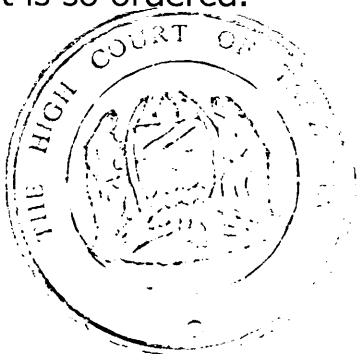
In the case of **Zilaje v. Feubora (1972) HCD 3** it was held that:

"Court will not readily interfere in order to give remedy where the party seeking such remedy sat on his rights and did not act with reasonable promptitude."

Likewise, in the instant matter, it is a considered view of this court that the applicants sat on their right to appeal by failing to appeal in time and failure to account for multiple sets of days of delay as pointed out herein above by the learned counsel for the respondent.

In the event, I find the Applicants to have failed to establish sufficient cause for the delay. The application is dismissed for lack of merit, with costs.

It is so ordered.



A handwritten signature in black ink, appearing to read "S.H. Simfukwe".

S.H. SIMFUKWE

JUDGE

08/03/2022