

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION No. 105 OF 2020**

(Appeal from the decision of the District land and Housing Tribunal for Arusha at  
Arusha Application No 228/2017)

**ESTER RUBEN ..... APPLICANT**

**VERSUS**

**MOHAMED MASHONO..... RESPONDENT**

**RULING**

**15/02 & 01/04/2022**

**MZUNA, J.:**

Ester Ruben, the applicant herein has filed this application seeking for extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal (DLHT) which was decided in favour of Mohamed Mashono, the respondent herein. Both the applicant and the respondent swore an affidavit and counter affidavit respectively for and against this application.

During hearing of this application which proceeded by way of written submissions, Mr. Hamisi Mkindi, the learned counsel from Legal and Human

Rights Centre (LRHC) appeared for the applicant, whereas the respondent was represented by Mr. Ngeseyan, the learned counsel.

*The main issue is whether there is sufficient cause shown for the delay?*

Arguing in support of the application, the Applicant's Counsel submitted that after the decision of the DLHT which the applicant was dissatisfied with, she sought to lodge an appeal only to find that she was out of time hence this application for extension of time. That the delay was due to factors which were beyond her control.

First that on 11<sup>th</sup> December 2020 the Applicant was informed by the Court Clerk that she filed the petition of appeal wrongly at the District Land and Housing tribunal for Arusha at Arusha, while she was supposed to file it at the High court of Tanzania Arusha Registry. She further submitted that on the same date 11<sup>th</sup> December 2020 the Applicant submitted the petition of appeal to the High court of Tanzania Arusha District Registry.

Second, that the delay is not inordinate and there was no negligence on her part citing the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian**

**Association of Tanzania**, Civil Application No. 02 of 2010, CAT (unreported).

Third, he has advanced the ground of technical delay as good cause because she filed the petition of appeal timely after the decision of the DLHT though mistakenly filed it at the DLHT instead of the High Court Arusha, citing the cases of **Bank M (Tanzania) Limited v. Enock Mwakyusa**, CAT, at Dar es Salaam, (unreported) and **Fortunatus Masha v. William Shija and Another** [1997] TLR 154.

In his reply submission, the learned counsel for the respondent submitted that it is a trite law that delay even of a single day must be accounted for citing the case of **Ridas Daniel Mollel v. Nathan Simonson**, Revision Application No. 43 of 2018, High court, Arusha registry (unreported). That case cited the case of **Vodacom Foundation v. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (CAT) at Dar es salaam (unreported).

He further stated that, the Applicant mentioned the Clerk of the DLHT, but the law is straight forward that whenever another person is mentioned in an affidavit, unless that Person swears his own affidavit, the adduced evidence

touching that person will be considered as hearsay evidence. Reference was made to the case of **Tanzania Milling Co. Ltd v. Zacharia Amani t/a All Gold Co. & Another** Civil Application No. 415 of 2018, High court Dsm Registry (unreported) which cited the case of **Benedict Kimwaga v. Principal Secretary Ministry of Health, Civil Application No. 31 of 2000**, CAT (unreported). He prayed for this application to be dismissed.

In her rejoinder submission the applicant reiterated her submission in chief.

This court has to see the relevant law before arriving at its decision. Section 41 (1) of the Land disputes Courts Act, Cap 216, Revised edition 2019 [Cap 216], to which this application relates, reads:-

*41(1) ...*

*(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:*

*Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days.*

(Emphasis mine).

The advanced reasons for the delay is attributed by first, filing the application in the wrong registry of DLHT for Arusha at Arusha which

presupposes that there was *an ignorance of the law*. Section 41 (1) of Cap 216 clearly expresses that appeals from the decisions of the District Land and Housing Tribunal must be lodged at the High court within 45 days from the date of the decision or order. The advanced defence of ignorance of the law, has long been restated that ignorance of the court procedure is not a defence. It was held in the case of **Ngao Godwin Losero v. Julius Mwarabu**,\_Civil Application No 10 of 2015 by the Court of Appeal of Tanzania at Arusha (unreported) that;

*"Ignorance of the court procedure cannot amount to good cause for granting the extension."*

I find that this is a lame excuse which cannot move the court to act on the ground of ignorance of the law.

As for the other ground of wrong information which was communicated to her by the Tribunal clerk, this ground with due respect, cannot move this court to decide in her favour for obvious reasons as well submitted by the respondent's counsel, that failure to annex an affidavit of the tribunal's clerk, as a person material to the case, all remains as hearsay. It was held in the case of **Benedict Kimwaga v. Principal Secretary Ministry of Health**,

(Supra) cited in the case of **Tanzania Milling Co. Ltd v. Zacharia Amani t/a All Gold Co. & Another** (Supra) that:

*"If an Affidavit mentions another person, that other person has to swear an affidavit. However, I would add that, is so where information of that other person is material evidence because without the other Affidavit it would be hearsay (sic)".*

(See also, the case of **John Chuwa v. Anthony Ciza** [1992] TLR 233).

If I may hasten to add, the record reveals that after she was instructed by the Tribunal clerk (name not disclosed), to lodge the appeal at the High court, the Applicant wrote a letter to the Deputy Registrar of the High court Arusha registry requesting the filing of an appeal without payment of the fee. The record shows, her letter was replied by the Deputy Registrar of Arusha on 15<sup>th</sup> December 2020 granting her request to file the appeal without paying the fees which she admits was already out of time. Thereafter, she spent more than 13 days up to the filing the present application on 29<sup>th</sup> December, 2020. I should remind the applicant that a diligent party, must account for each day of the delay in order to show there is good cause. It was held in the case of **Lyamuya Construction Limited Versus Registered Trustees of The Young Women's Christian**

**Association of Tanzania** (supra), among others that:

*"...The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intends to take..."*

Surely the applicant failed to account for all the period of the delay which presuppose did not act diligently or in good faith in view of the case of **Ridas Daniel Mollel v. Nathan Simonson**, (supra) which cited the case of **Vodacom Foundation v. Commissioner General (TRA)**, (supra) where the Court stated at page 9 that;

*"Delay of even a single day must be accounted for otherwise there would be no point of having rules prescribing periods within certain steps have to be taken."*

The applicant has not accounted for the delay. It was further held in the case of **Royal Insurance Tanzania Limited vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008, cited with approval in the case of **Sebastian Ndaula vs. Grace Rwamafa** (*Legal Personal Representative of Joshwa Rwamafa*), Civil Application No. 4 of 2014, CAT, (Unreported) that:-


*"It is trite law that an application before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application had been brought in good faith."*

By failing to mention the name of the tribunal clerk it presupposes that even the application was not brought in good faith. I do not agree as well, the argument that the delay was due to court processes as alleged but due to inaction or negligence. Similarly, the defence of technical delay in that she filed the application at the DLHT timely, cannot justify the ground of good cause because this would be a justifiable ground if it was struck out after being filed at the proper court. The cited case of **Fortunatus Masha v. William Shija and Another** (supra) is misplaced. In that case, the original action which was filed timely at the proper court, was struck out. It was described as mere "technical delay" unlike the case under consideration.

That said, there is no good cause shown to justify extension of time for the unexplained delay of 38 days (from the date when 45 days fell due from the date of judgment 07/10/2020 to 29/12/2020, the date of filing this application).



This application lacks merit and is hereby dismissed with costs.

  
**M. G. MZUNA,**  
**JUDGE.**  
**01/04/2022.**