

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 60 OF 2021

(C/f District Land and Housing Tribunal, Appeal No. 22/2018, High Court of Tanzania at Arusha, Land Appeal No.16/2019 and Misc. Land Application No. 90/2020 originating from Land Complaint No.06/2017 of the Ward Tribunal of Kimyaki Ward)

MEISHOORI LORAMATUAPPLICANT

VERSUS

SAIGURANI LORAMATU RESPONDENT

RULING

11/04/2022 & 30/05/2022

KAMUZORA, J.

The Applicant preferred this application for extension of time within which to file an appeal against the decision delivered by the District Land and Housing Tribunal in Appeal Number 22 of 2018. The application was made by way of chamber summons under section 38(1) of the Land Disputes Courts Act Cap 216 R.E 2019 and was supported by an affidavit sworn by the Applicant himself. The application was contested through counter affidavit sworn by the Respondent.

Hearing of the application was done by way of filling writer submission and both parties appeared in person with no any legal representation.

Submitting in support of the application the Applicant submitted that, he was the appellant in Appeal No. 22/2018 before the District Land and Housing Tribunal, and in Land Appeal No. 16/2019 before the High Court of Tanzania and the Applicant in this application. That, he was supplied with the certified judgment on 3rd May 2019 and the decree was not supplied to him to date. That, on 12th June 2019 he filed the appeal to the High Court and its ruling was supplied to him on 26th November 2020 and the drawn order is yet to be supplied to him to the present despite writing various reminder letters.

The Applicant went on and submitted that, the preliminary objection was raised and the ruling was issued on 13th November, 2020 to the effect that the appeal was time barred and the said appeal was struck out. That, on 14th January 2020 the Applicant was feeling weak and dizzy as his one hand was not sensing anything and he went to hospital where he was told that his blood pressure was high and he has to rest and reduce stress. He was admitted to the hospital until 20th November 2020. That, his condition was worse and by 27th November

2020 he was unable to get a person to assist him with the procedure to make application No.90/2020. That, he withdrew Application No.90 of 2020 and was given 14 days to file a fresh application and this application was thus filed as ordered. The Applicant attached medical documents/discharge form from Arusha District Council Hospital as annexure 2 to the application.

The Applicant further submitted that, the 1st appeal which he filed to the High Court was struck out for being time bared. The Applicant believes that, if given a chance to argue the appeal he had chances of success in considering that there are irregularities in the proceedings of the trial tribunal. The Applicant also claimed that, he was not given a chance to be heard since as his advocate was not allowed to appear in the tribunal and defend his case. That, the Applicant was unable to understand the proceedings and he asked for the transfer of the proceeding but was denied and the tribunal proceeded in determining the matter.

The Applicant concluded by stating that his appeal stands good chance of success and the delay was not caused by any negligence on his side.

Contesting the application, the Respondent adopted the counter affidavit to form part of his submission. He submitted that, the submission filed by the Applicant does not meet the standard of being called a written submission as it violates number *basic principles and standards required in making it. That, the purpose of filing a written submission is to enable the court to better understand the nature of the case, the issue involved and ultimately adjudicate upon and determine the case properly. In support of this argument, he cited the case of **Gervas masome Kurwa Vs Returning Officer and others** [1996] TLR 32 and insisted that the submission for the Applicant does not contain any legal reasoning hence urged this court to disregard the same.

The Respondent also submitted that, the Applicant's submission contains number of annexures and attachments an anomaly prohibited in written submission. For this he cited the case of **Rosemary Stella Chambejairo Vs. David Kitundu Jairo**, Civil reference No 6 of 2018 CAT at DSM.

The Respondent went on and submitted that, the application for extension of time should not be allowed as it is a trite law that an application for extension of time is entirely the discretion of the Court to

grant or refuse. That extension of time can only be granted where there has been sufficient established delay was with sufficient cause. To buttress his submission, he cited the case of **Asayiel Paulo Masaju Vs. Rival Church Saccos**, Misc. Land Application No. 18/2020 HC at Sumbawanga.

The Respondent explained that, in the present case the judgment in Appeal No. 22/2018 was delivered on 09/04/2019 and on 25/04/2019 the Applicant wrote a letter requesting for a copy of that judgment and waited for almost 2 months until 03/05/2019 when he wrote another letter. That, on 12/06/2019 after the expiry of 60 days it was when he filed the Misc. Land Appeal No. 16/19 to the High Court and the same was struck out with costs.

On the Applicant's claims for irregularity in the proceedings of the Ward Tribunal the referred the case of **Asyile Paulo Masaku (Supra)** where it was held that, irregularity of the assailed decision must clearly be visible on the face of the record. The Respondent insisted that, the alleged irregularity in the current application need a long- drawn argument or process. That, in the same is concocted by the Applicant to delay execution process.

Basing on the above submission the Respondent prays that the application be dismissed with costs.

Upon a brief rejoinder submission the Applicant submitted that, the submission filed followed all the standards and the submission referred by the Respondent in the cited case referred to submission put forward by the officer of the court or learned counsel. That, the Applicant is not represented by any learned counsel and the written submission is short and clear. That, there is no any hard and fast rule on pages that should be in a written submission thus the arguments and authorities cited are baseless.

Regarding the annexures to the submission the Applicant submitted that, the annexures are already annexed to the application and for easy reference there is no any harm if annexures are put. He reiterated his submission in chief regarding his health condition and added that, the reasons submitted by the Applicant are sufficient referring also the medical report is annexed in the submission.

Concluding the submission, the Applicant agreed that the court has discretion to grant or deny the grant the extension of time. He however insisted that, such discretion must be exercised judiciously as the Applicant has indeed put forward material facts which will enable the

court to allow his application. That the point of illegality is clear on face of the trial court record and was noted in Misc. Land Appeal No. 16/2019 by Mzuna, J in Paragraph 2 of page 1 of his judgment. To cement on this argument, he cited the case of The **Principal secretary Ministry of Defence and National Service vs. Devram P Vamambia** [1992] TLR.

I will first address the concern raised by the Respondent annexures to the Applicant's submission. In his written submission the Applicant apart from case laws attached, the proceedings, letters and medical chit in support of his submission. It was argued by the Respondent that such practice is unacceptable and that such attachment should be disregarded. The Applicant contended that the same documents were attached to the affidavit in support of application.

I join hands with the Respondent's submission as well as the cited case of **Registered Trustees of the Archdioceses of Dar es Salaam** (Supra) that submission is not evidence but rather elaboration of evidence already in court records and they are not intended to be a substitute for evidence. That being said the annexed documents attached to the Applicants written submission are expunged from the record and will not be considered by this court in reaching its decision.

However, the attachments to the affidavit in support of application will be considered by this court. On the claim that the Applicant's written submission does not meet the required standard of being called a written submission, I find this claim to be baseless as there is no any law cited by the Respondent which governs the drafting of written submission which was violated by the Applicant.

Turning to the merit of the application, I have considered the application, the sworn affidavit of the Applicant which lays the basis of this application and the submissions by the parties. The Applicant is seeking for enlargement of time to file an appeal out of time. The provision of the law cited by the Applicant in moving this court is section 38(1) of the Land Disputes Courts Act Cap 216 R.E 2019 which provides that,

"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."

As a matter of general principle, whether to grant or refuse an application for extension of time is entirely in the discretion of the Court but that discretion is to be exercised judiciously. With the wording of the above provision, the court can grant extension of time where good and sufficient cause is shown by the Applicant. The overriding consideration is that, there must be sufficient or good cause to justify the court to extend time within which to file an appeal or revision or an application out of the prescribed period. See the decision in the case of **Tumsifu Kimaro(The Administrator of the Estate of the late ELIAMINI KIMARO) vs. Mohamed Mshindo**, Civil Application No. 28/17/2017 CAT at DSM (Unreported).

It is also the requirement of law that, in the application for extension of time each day of the delay must be accounted for as what was provided for in the case of **Bushiri Hassan v. Latifa Mashayo**, Civil Application No.2 of 2007 CAT (Unreported). It was contended by the Respondent that the Applicant has shown no good cause for the grant of extension and failed to account for each day of delay. Thus, the question to be determined by this court is whether the Applicant have established sufficient cause for this court to exercise its discretionary powers to grant the Applicant.

From the facts deponed in the Applicant's affidavit as well as the attachments there to it appears that, the judgment of the DLHT intended to be appealed against was delivered on 09/04/2019 and was certified as the true copy of the original on 03/05/2019. The Applicant was supplied with the copy of the judgement on 04/06/2019. The Applicant's first Appeal to this court, Misc. Land Appeal No. 16 of 2019 was filed on 12/06/2019 and was struck out on 12/11/2020 as it was filed out of time. The Applicant received a copy of the ruling on 26/11/2020 and lodged an application for extension of time on 14/12/2020. On 17/8/2021 the application was withdrawn by the Applicant with leave to refile another proper application within 14 days. This application was then lodged on 30/08/2021 within that specified period of 14 days.

Under paragraph 8, 9 and 10 of the Applicant's affidavit the Applicant also claimed that, from 14/1/2020 to 20/11/2020 he was sick and hospitalised and the discharge summary was attached to the affidavit in support of application. Upon reading the said annexure it is clear that the Applicant was admitted 14/11/2020 and discharge on 20/11/2020 and I think writing 14/1/2020 was a typing error.

From the above analysis of the facts as depicted from the Applicant's affidavit, the chain of events as above pointed out reveal that the Applicant was diligent in making follow up for his case. The judgment of the DLHT intended to be appealed against was delivered on 09/04/2019 and was certified as the true copy of the original on 03/05/2019. It appears that the delay in filing the first appeal was due to delay in receiving a copy of judgement from the DLHT. While the judgment was delivered on 09/04/2019 the appeal was filed on 12/06/2019 with three days delay which to me is reasonably short. After the appeal was struck out on 12/11/2020 for being out of time, the Applicant became sick two days later and was admitted to hospital on 14/11/2020 and discharged on 20/11/2020 and was asked to rest. The delay to be counted here is from 26/11/2020 when he was supplied with copy of the ruling striking out the appeal to 14/12/2020 when the first application for extension of time was filed to this court. The delay from the date of receiving a copy of ruling to the date of filing the application was reasonably short and cannot be used to conclude that the Applicant acted in apathy or negligent in prosecuting his right.

For the reasons stated above I find merit in this application. The application for extension of time is therefore granted for the Applicant to

file his appeal with thirty (30) days from the date of this ruling. No order for costs is issued.

DATED at **ARUSHA** this 30th day of May, 2022.



A handwritten signature in black ink, appearing to read "D.C. Kamuzora", is written over the official name.

D.C. KAMUZORA

JUDGE