

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAA
MISC. APPLICATION NO. 527 OF 2020

(Arising from the judgement of the District Land and Housing Tribunal in Land Application No. 75 of 2011 delivered on 12/7/2012)

SALUM MIGANDU APPLICANT

VERSUS

ZAITUNI LIPIKA RESPONDENT

RULING

Hearing date on: 02/5/2022

Ruling date on: 10/5/2022

NGWEMBE, J:

Before this court is an application for extension of time upon which the applicant may lodge an appeal or revision against the judgement and decree delivered by the District Land and Housing Tribunal for Malinyi on 12/7/2012.

Since then to 18th September, 2020, the applicant found his way to this court under assistance of advocate Augustine Mathern Kusalika from GF Law Chambers. The applicant moved this court under section 14 (1) of the Law of Limitation Act, also supported his application with an affidavit affirmed by the applicant Salum Migandu.



The contents of the affidavit may be summarized as follows:-

2. During trial at the Tribunal, the applicant produced a photo copy of the sale agreement which was rejected by the Hon. Chairman;
3. The applicant tried to appeal to the High Court which same was registered as Land Appeal No. 65 of 2012. Such appeal was dismissed for want of appearance;
4. That the applicant tried to restore such appeal but in vain. Hence this application for extension of time which never caused by negligence.

These are the relevant paragraphs associated with this application for extension of time. The affidavit is attached with a photo copy of a sale agreement and the judgement of the trial Tribunal which same goes back to 28/8/1992 and the latter annexure was dated 12/7/2012.

Having that background in mind, now is the arguments submitted on the hearing date. Throughout of this application, either by design or by default, the respondent never appeared in court even for a single day though she was served with summons to appear. As such, and bearing in mind the application has been pending in this court about three years now, I could not afford to continue with endless adjournment, hence ordered hearing to proceed exparte against the respondent.



As a result, the learned advocate Kusalika argued that the reason for delay are demonstrated in paragraphs, 2, 3,4,5,6 & 7 of the affidavit which I have summarized hereinabove. Added that during trial, the applicant was not represented by an advocate, hence was unaware that original sale

agreement was required to prove his case. Even after requesting for adjournment so that he case produce the original sale agreement, yet the Tribunal turned down his prayer. Had the applicant managed to produce the said original sale agreement the Tribunal would arrive into a different conclusion.

Rested by adding that, the delay was due to good cause and the applicant may surfer irreparably if extension of time is not granted.

I find no difficult to recap on the basic applicable principles in respect to the application of this nature. From the outset, extension of time is purely reserved to the court's discretionary powers. Yet such discretion is always exercised judicially. Otherwise even that discretion if used arbitrary may be challenged on appeal. Therefore, the court's discretion is not absolute rather is subject to disclosure of good cause or sufficient cause accounting each day of delay. This position was rightly, decided by the Court of Appeal in the case of **Henry Muyaga Vs. TTCL, Application No. 8 of 2011**, where held:-

*"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the courts may take into consideration, such factors as, the **length of delay**, the **reason for the delay**, the **chance of success of the intended appeal**, and **the degree of prejudice** that the applicant may suffer if the application is not granted"*
(Emphasis in mine).



Equally important is the applicant to disclose good cause for such delay. The best reason should exonerate him from being a cause of delay.

Importantly, since time immemorial, courts have denied ignorance to constitute good cause or reason for inaction of any party to the suit. The famous maxim of *ignorantia juris non excusat* applies since its formation to date. Therefore, the applicant cannot plead ignorance as a reason for delay. This position was properly articulated in numerous cases including in the case of **Valerie McGivern Vs. Salim Farkrudin Balal, Civil Appeal No. 386 of 2019 (CAT)**. Also the case of **Ngao Godwin Losero Vs. Julius Mwarabu, Civil Application No. 10 of 2015 (CAT)** at page 6 where it was held:-

"When all is said with respect to the guiding principles, I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As has been held times out of number, ignorance of law has never featured as a good cause for extension of time....."

Lastly, the court is there to protect a party who is diligent on his rights. Lack of diligence is not a ground for extension of time. This position was rightly held by the Court of Appeal in the case of **Dar es Salaam City Council Vs. Jayantilal P. Rajani, Civil Application No. 27 of 1987** held:-

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be considered, including whether or not the application has been brought promptly; the absence of any explanation for delay, lack of diligence on the part of the applicant"

Undoubtedly, time limitation is a material fact, which must be observed and strictly complied with.

Moreover, the Court of Appeal in **Civil Appeal No. 19 of 2016 Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni** at page 13 quoted the book of C.K. Takwani writes in Civil Procedure, with Limitation Act, 1963, 7th Edition, at page 782 observed:-

"Statutes of Limitation are based on two well-known legal maxims:

*(i) The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**)*

*(ii) The law assists the vigilant and not one who sleeps over his rights (**Vigilantibus non dormientibus jura – subveniunt**)*

Much as I fully observe with critical minds those principles, yet I am not blind on exceptional circumstances upon which, time limitation may be extended to appeal to the superior court. For instance, when the appellant delayed to appeal due to good cause; or the delay was caused by inaction of the court in providing necessary documents; or illegalities apparent on the face of record; or in any way the delay was not caused by the appellant; the list is not complete. In anyway, the good cause should exonerate the applicant from being the source of delay.

When delay is caused by good cause or illegality of the impugned judgement is observed and upon sufficient cause, extension of time may be granted.

Having laid down the guiding principles on extension of time, the question remains, whether the applicant has disclosed good cause for such

long delay of eight (8) years? To answer this question, I have to peruse again the affidavits of the applicant. Paragraph 2, 3, & 4 of the affidavit discloses that upon delivery of the impugned judgement in year 2012 unsuccessfully tried to appeal to the High Court Land Registry as Land appeal No. 65 of 2012. However, same was dismissed for want of prosecution. Later tries unsuccessfully to restore that appeal. This may be the only reason disclosed by the appellant for delay of eight (8) years.

I find difficult to buy in such reason and extend time. Always, whoever has an action in a court of law must be diligent and active to follow up. Otherwise, it is difficult to plead ignorance against your own case/action.

There is no need to overemphasize on the importance of time limitation in the administration of justice. Old books provided unequivocal purpose of time limitation, which covers not only the disputants but also to the general public. Endless litigation affects the welfare of the disputants and the general public as was well considered by the Court of Appeal in **Civil Appeal No. 19 of 2016 Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni at page 13 quoted the book of C.K. Takwani writes in Civil Procedure, with Limitation Act, 1963, 7th Edition, at page 782 held:-**

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- “ Statutes on Limitation are based on two well-known legal maxims:
- (iii) The interest of the State requires that there should be an end to litigation (***interest reipublicae ut sit finis litium***)
 - (iv) The law assists the vigilant and not one who sleeps over his rights (***Vigilantibus non dormientibus jura – subveniunt***)

In this application, the applicant slept on his rights, hence this court cannot assist him rather than dismissing this application forthwith as I hereby do, with no order as to costs.

I accordingly order.

Ruling delivered in chambers this 10th day of May, 2022



P.J. NGWEMBE

JUDGE

10/5/2022

Court: Ruling delivered in chambers on this 10th day of May, 2022 in the presence of Advocate Josephine Mbeni for Kusalika Advocate and in the absence of the Respondent.

Right to appeal to the court of appeal explained.



P.J. NGWEMBE

JUDGE

10/5/2022