

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MWANZA SUB-REGISTRY**  
**AT MWANZA**

**MISC. CIVIL APPLICATION No. 100 OF 2022**

*(Arising from a decision of the District Land and Housing Tribunal for Mwanza at Mwanza in Land Application No. 237 of 2018)*

**ELEMENTINA GEORGE CASIAN----- APPLICANT**  
**VERSUS**

**RAID ABDI MOHAMED-----1<sup>st</sup> RESPONDENT**

**FRANCIS MWIBEA-----1<sup>nd</sup> RESPONDENT**

**RULING**

*Last order: 22.02.2023*

*Ruling date: 24.02.2023*

**M. MNYUKWA, J.**

The applicant filed this application by way of chamber summons supported by an affidavit deposed by Elementina George Casian the applicant. The instant application is brought under section 14 of the Law of Limitation Cap. 89 RE: 2019, and section 95 of the Civil Procedure Code Cap. 33 RE: 2019. The applicant seeks this court to extend the time to appeal before this court out of time against the decision of the District Land and Housing Tribunal in Application No. 237 of 2015 the decision which was delivered on 01.10.2021.



At the hearing of the application, the applicant afforded the service of Lordson Nanyaro learned advocate and the respondent was represented by Mr. Stephen Makwega learned advocate.

The applicant's counsel was the first to submit and prays this court to adopt his affidavit sworn in by the applicant to form part of his submission. He submitted that his prayer is for an extension of time. He avers that the decision of the DLHT was supplied to the applicant on 09.03.2022 and as she was dissatisfied, the applicant engaged and instructed a lawyer to challenge the decision of the DLHT and that she paid all fees before she went to attend her sick parent in the village. The counsel went on that, the advocate who was engaged could not work on it and her delay was due to the negligence of the advocate. Supporting his argument the applicant's counsel cited the case of **Kambona Charles (as the Administrator of the Estate of the Late Charles Pangani) vs Elizabeth Charles**, Civil Application No. 529 of 2019 that the court granted an extension of time due to the negligence of the advocate. He also referred to the case of **Yusuph Same and Another vs Hadija Yusuph**, Civil Appeal No. 01 of 2002. For that reason, he prays the application to be granted.



Mr. Kweka, the learned counsel for the respondent strongly opposed the application referring to paragraphs 3 and 4 of the applicant's application which complains of the advocate's negligence to pursue the course. He went on that, in granting the application, the court is required to assess if there are sufficient cause for the delay and whether the applicant accounted for each day of delay.

He avers that, the affidavit is silent as to when the applicant engaged the advocate for the certified copies were dated 11.03.2022 and the applicant claims to have received her copy on 09.03.2022. He insisted that since the applicant claims that it was the negligence of Mr. Mohan Kabonde the learned counsel, there must to be an affidavit sworn by him to support her claim. He went on that, the applicant's affidavit is also silent from when she returned to nurse her sick mother and discover the alleged negligence and the efforts she took to deal with the situation.

He went on that, the applicant delayed for almost 8 months and she did not account for each day of the delay. Supporting his argument he cited the case of **Ramadhani Kihani vs TAZARA**, Civil Application No. 401 of 2018 whereas the court insisted on the need for the applicant to account for each day of delay. He insisted that the case cited by the



applicant is distinguished for the advocate was engaged in a task force at a national level and he prays the application to be dismissed.

Rejoining, the applicant learned counsel added that, he could not file the affidavit of the learned advocate for his whereabouts is not known and the applicant returned back from the village in November 2022 and brought the application immediately. He insisted the application to be granted.

Having gone through the applicant's application, as well as the submissions of both parties, I am left with the central issue for consideration and determination before me is whether the application is merited.

The law is settled that when it comes to granting an order for an extension of time to appeal, the court has the discretion to grant it however, the discretion has to be exercised judiciously and normally based on the circumstance of each case on establishing that the delay was with a sufficient cause where the applicant is required to account for each day of delay or else there was a point of illegality that impedes justice.

The applicant's reason was that after she was supplied with the copy of the judgement on 09.03.2022 after the judgment was delivered on

01.10.2021, she engaged an advocate and instructed him to appeal against the decision of the DLHT. It was her assertion that she left to the village to nurse her sick mother and she was back in November 2022 is when she found that the appeal was not filed and therefore filed the instant application.

Going to the records, the impugned decision was delivered on 01.10.2021 and the records show that the copy of the judgment was certified on 11.03.2022. As per the provision of section 41 of the Land Disputes Courts Act, Cap 206 RE; 2019 the appeal lies to this court after the decision within 45 days. The law provides: -

*Section 41(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".*

Based on the above provision of the law, the applicant's time limitation started to run from 16.11.2021 and in the computation of the days, from the time the statutory time expired to the time this application was filed that's on 21.11.2022, the applicant delayed for almost 365 days. The applicant claims on paragraph 3 of her affidavit that she received the

copy of the judgment on 09.03.2022 which shows on records that the copies were certified on 11.03.2022. Giving her a benefit of the doubt, from the date she acknowledges receipt of the judgment that is when the time of limitation started to run, the applicant is now required to account for almost 6 months of delay.

As it appears in the records and the applicant's submissions, first, In the applicant's affidavit, she did not state when she engaged the advocate, and when she was aware that the advocate defaulted to act on her instruction to justify her cause that the delay has a justified reason. Despite the reason stated that the default was a result of the advocate's negligence, the applicant stands a legal duty to account for every day of delay from the time when her statutory time ended to the time this application was filed. In the case of **Bushfire Hassan vs. Latina Lucia Masanya**, Civil Application No. 3 of 2007 when addressing the issue of delay the Court of Appeal held that: -

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



This stance was followed in a surfeit of decisions among them being the case of **Mustafa Mohamed Raze vs. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 and **Wambele Mtumwa Shahame vs Mohamed Hamis** Civil Reference No. 8 Of 2016.

Secondly, the advocate's negligence may be taken as a reason for the extension of time-based on the circumstance of the case as stated by the Court of Appeal in **Philemon Mang'ehe T/A Bukine Traders Vs Gesbo Hebron Bajut**, Civil Application No. 8 of 2016. In this instant application, the applicant claiming that she engaged the advocate, nevertheless, her affidavit is silent as to when she engaged him. Therefore, it can not be ascertained that indeed it was the default of the advocate and what were the circumstances encountered which show that it was the advocate's negligence that resulted to the delay. In **Kalunga and Company Advocates v. National Bank of Commerce Limited** (2006) TLR 235, it was stated that: -

*"where there is inaction or delay on the part of the applicant, there ought to be some kind of explanation or material upon which the Court may exercise the discretion given".*

The applicant did not manage to give her explanation to the extent that the delay was not in her control for this court to grant the application.

I am settled with the principle stated in the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held;

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

I, therefore, hold that the applicant did not give sufficient reasons nor does she account for each day of delay to move this court to exercise its unfettered discretion to extend time to file his application for the certification on point of Law as prayed. I, therefore, proceed to dismiss the application.

It is so ordered.



**M.MNYUKWA**  
**JUDGE**  
**24/02/2023**

**Court:** Ruling delivered on 24<sup>th</sup> February 2023 in the presence of both parties.

**M.MNYUKWA**  
**JUDGE**  
**24/02/2023**