

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISCELLANEOUS LAND APPLICATION NO. 34 OF 2021

(C/F the District Land and Housing Tribunal for Moshi, Land Case No. 40 of 2013.)

RICHARD ANSELIMU MUSHI.....APPLICANT

VERSUS

KILIMANJARO CENTRE FOR

ORPHANS AND STREET CHILDREN..... RESPONDENT

RULING

Last order: 24/2/2023

Ruling: 10/3/2023

MASABO, J:

In this uncontested application, a leave for extension of time is sought under section 41(2) of the Land Disputes Act [Cap 216 RE 2019] to enable, Richard Anselimu Mushi (DHLT), the applicant herein, to knock the doors of this court by way of an appeal against the decision of the District Land and Housing Tribunal for Moshi in Land Case 40 of 2013. The reasons advanced in support of his prayer as stated in the applicant's affidavit bracing the chamber summons is that, when the decision sought to be challenged was pronounced on 30th January 2014, it aggrieved him but he could not take the necessary steps owing to sickness, old age,

indigence and pursuit of a wrong action. With regard to sickness and old age it is was deponed that, because of old age, the applicant has become vulnerable to chronic illness. He is diabetic and his blood pressure is, most often, high. As a result, he was frequenting hospitals for treatment and his mental health was severely affected owing to blood pressure such that he had constant loss of memory and lost track of the of the dates within which to file his appeal.

In further amplification of his grounds, he deponed that he is indigent hence unable to engage an advocate. In 2016, he managed to secure an advocate to assist him but, unfortunately, the counsel filed an incompetent application which was struck out on 8/12/2016. He thereafter felt sick until 2019 when he decided to seek help from public prosecutors but this too did not bear any fruit as he felt sick again. Based on these factors he prayed that the court be pleased to hold that a good cause has been demonstrated and proceed to grant his prayer as the delay was caused by reasons other than his negligence.

Upon the application being instituted and the first orders entered, the search for the respondent ensued unsuccessfully. She could not be found for purposes of physical service. On satisfaction that physical service has

turned futile, an order for substituted service by way of publication of the summons was granted and the summons was subsequently published in local newspapers but this too ended barren. Hence an order for an *ex parte* hearing against the respondent.

Being lay and unrepresented, the applicant had nothing to add to his application apart from his prayer that the application be considered meritorious and the application be allowed.

I have dispassionately considered the application and the affidavit bracing it. Statutes of limitations are an integral part of every functioning justice system. They have a significant role in the smooth conduct of court proceedings and in ensuring finality of litigations. Litigants are, therefore, expected to strictly adhere to the time set out under such statutes/regulations. The failure attracts stern consequences on the defaulting party as demonstrated in section 3 of the Law of Limitations Act [Cap 89 RE 2019] which categorically states that a matter filed out of time should be dismissed. The rationale for strict adherence with laws of limitation is well expounded in **Ratnam v. Cumarasamy** (1964) 3 All ER 933 where it was stated thus:

"The rules of court must, *prima facie*, be obeyed, and in order to justify a court in extending the time during which some step-in procedure requires to be taken, there must be some material on which the court can exercise discretion. If the laws were otherwise, a party in breach would have unqualified right to an extension of time which would defeat the purpose of the rules which is to provide for a time table for the conduct of litigation".

A leave for extension for extension is thus be exceptionally granted upon the defaulting party demonstrating to the satisfaction of the court there was a good cause inhibiting him from taking the requisite court action/instituting the proceedings. In the present case, section 41(2) of the Land Disputes Courts Act [Cap 216 RE 2019] which governs appeals from the DLHTs to the High Court, provides that a party aggrieved by the decision of the DLHT and intends to appeal to appeal to the High Court should do so within 45 days. In the present case, the records show that the decision intended to be challenged if the leave is granted was delivered on 30/1/2014. Thus, the applicant had up to 16/3/2014 to file his appeal but he did not. He filed the present application on 30/9/2021 which is approximately 7 years after the date of the judgment. Evidently, the delay is inordinate and inexcusable unless a good cause is

demonstrated. The sole question to be determined, therefore, is whether or not a good cause for extension of time has been demonstrate.

Much as there is no universal definition of the term good cause, it is now settled that the existence of a good cause may be established by assessing such factors as: the reason (s) for delay, length of delay, the degree of prejudice the respondent stands to suffer if time is extended, whether the applicant was diligent, whether there is a point of law of sufficient importance such as the illegality of the decision sought to be challenged and the overall importance of complying with prescribed time (see **Leornad Maeda and Another v. Ms. John Anaeli Mongi and Another**, Civil Application No. 31 of 2013, CAT; **Henry Mugaya v. Tanzania Telecommunication Company Ltd**, Civil Application No. 8 of 2011, CAT and **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 , CAT.

The duty to demonstrate such factors rests on none other than the applicant. He is solely responsible to establish that there are some materials upon which this court can exercise its discretion. Cognizance of this duty, the applicant, as demonstrated above, has deponed tht four (4)

factors inhibited him from timely instituting the appeal. I have carefully examined each of the grounds deponed in the affidavit. Starting with sickness, no doubt, sickness when demonstrated, is a good ground upon which to enlarge the time. However, to suffice as a good cause, the applicant must clearly demonstrate that he was indeed sick and that the sickness inhibited him from taking the necessary court action, in this case, filing the appeal. It is not sufficient for the applicant to casually state that he was sick. More so, when the delay is as inordinate as in the present case. He must produce sufficient materials in support of his ground.

The applicant has appended some medical certificates to his affidavit in attempt to substantiate his claim. I have examined the certificate rendered but they are far from substantiating his case as all what they show is that he was retreated as an outpatient at St Joseph CDH on 11/9/2020, 19/9/2020 and at MRRH facility on 2/11/2020. There is also a non-legible payment receipt from St. Joseph Hospital purported to demonstrate further that he ws being treated there. In these certificates, there is no indication whatsoever that the applicant was either excused from duty, admitted in hospital or anyhow inhibited from conducting his normal routine.

Besides, even if I were to assume that these certificates suffice as proof that in the said days, he was indeed sick and unable to institute the proceedings, the sickness will not sail as a good cause for extension of time as serve for these dates, there is no evidence that he was sick for the rest of the time.

Old age, indigence and inability to engage an advocate are similarly insufficient ground to warrant an extension of time. Much as legal representation is a right, it is not a prerequisite for instituting a court proceeding. In our courts, justice is not exclusively served to those with means to engage advocates. Save for minors and other persons with no legal capacity to institute a court proceeding, lay and unrepresented litigants and litigants with legal representation, all enjoy equal access to the courts irrespective of their age, social or economic endowment. The mere fact that a litigant is old and had no advocate as he had no means to engage one, cannot and would not constitute a good cause for extension of time.

As regards pursuit of wrong proceedings, I have taken note of the ruling of this court dated 8/12/2016 by which it is demonstrated that between for a period of 8 months between 8/4/2016 and 8/12/2016, the applicant

was inadvertently prosecuting an application for extension of time within which to file a notice of appeal. Certainly, this period is excusable as the law regards such time as period of technical delay hence excusable as stated in **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 and in subsequent decisions of the Court of Appeal notably in **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016, **Zahara Kitindi & Another v. Juma Swalehe & 9 others**, Civil Application No. 4/05 of 2017 and **Samwel Kobelo Muhulo v. National Housing Corporation**, Civil Application No. 302/17 of 2017. Accordingly, the period of 8 months within which the applicant was prosecuting the wrong application is deducted from the duration of delay.

Having deducted this period and the dates within which the applicant was attending hospital (assuming, just for the sake of argument, that they are excusable), I am left with a period of more than 6 years uncounted for. The omission to fully account for these days is a fatal anomaly as the law expects the applicant to fully account for the delay. As stated in **Wambura N.J. Waryuba vs The Principal Secretary Ministry of**

Finance & Another, Civil Appl. No.320/01 of 2019 [2020] TZCA 357(Tanzlii) and a plethora of other authorities, in an application for extension of time, delay of even a single day must be fully accounted for else the application will fail. Evidently, the applicant in the present application has miserably failed this requirement. The application, consequently, fails and is dismissed for want of a good cause.

DATED and **DELIVERED** at **MOSHI** this 10th day of March 2023.

X



Signed by: J.L.MASABO

J.L. MASABO

JUDGE

10/3/2023

