

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

LAND APPLICATION NO. 21 OF 2022

(Arising from the Decision of the District Land and Housing Tribunal for Tabora in Land Case No. 70 of 2021 and the Decision of Lutende Ward Tribunal in Land Application No. 01 of 2021)

WILSON MOSHI JILALA..... APPLICANT

VERSUS

1. SHIJA LUBINZA 1ST RESPONDENT

2. ABDALLAH LUBINZA 2ND RESPONDENT

RULING

Date of Last Order: 15/02/2023

Date of Delivery: 20/03/2023

KADILU, J.

In Lutende Ward Tribunal, the applicant herein lost the case against the respondents in Land Application No. 01 of 2021. Dissatisfied with that decision, he appealed to the District Land and Housing Tribunal for Tabora through Land Appeal No. 70 of 2021. The decision of the DLHT in Land Appeal No. 70 of 2021 was delivered on 22/4/2022 by the honourable Chairman Waziri, M.H., who upheld the decision of Lutende Ward Tribunal by dismissing the appeal.

Being aggrieved by the decision of the DLHT, the applicant wishes to appeal to the High Court, but he is time-barred. He filed the present

application seeking leave of this court to file an appeal out of time. The application is made under Section 38 (1) of the Land Disputes Courts Act, Cap 216 of R.E 2019. It is brought by way of chamber summons supported by an affidavit of the applicant. The applicant prays for the application to be granted and costs to be provided for. The applicant adduced the following reasons as causes for the delay:

1. That, judgment of the DLHT was delivered on 22/4/2022.
2. That, on 9/5/2022, the applicant wrote a letter to the DLHT requesting to be supplied with certified copy of judgment.
3. That, up to on 6/6/2022, the said copy of judgment was not supplied to the applicant. He decided to write a reminder letter to the DLHT.
4. Judgment of the DLHT was certified on 30/6/2022.
5. That, a copy of judgment of the DLHT was supplied to the applicant on 08/7/2022.
6. That, the applicant was deliberately caught and detained for three days by the Ward Executive Officer something which affected his thinking in connection to the intended appeal and caused the delay.
7. That, the present application was filed on 26/7/2022.

The respondent opposed the application. He challenged the applicant's affidavit by stating in his counter affidavit that, there is no good reason for the applicant to delay in filing his appeal within time stipulated by the law. The respondent avers further that the applicant was well informed by the Chairman of the Tribunal that he had 60 days within which he could appeal.

He finally stated that the time for the applicant to appeal has already expired therefore, he prayed for the application to be dismissed with costs.

When the application was called for hearing, the applicant was represented by Mr. Lucas Ndanga, learned Advocate while the respondent appeared in person, without legal representation. The applicant's counsel prayed the court to adopt the affidavit of the applicant and reiterated its contents. Likewise, the respondent requested the court to adopt the contents of his counter affidavit.

I have gone through the affidavit, counter affidavit, and submissions of the parties. The issue for me to determine is whether the applicant has established sufficient reasons for the delay which persuade the court to grant leave to file appeal out of time. Under s. 14 (1) of the Law of Limitation Act [Cap. 89 R.E.2019], the applicant is required to account for each day of delay and give reasonable and sufficient reasons for the delay. As to what amounts to good or sufficient cause, the Court of Appeal in the case of *Jumanne Hassan Bilingi v R.*, Criminal Application No, 23 of 2013 (CAT, unreported) stated as follows:

"...what amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements define good cause to mean, reasonable cause which prevented the applicant from pursuing his action within the prescribed time."

Further, it is the position of the law that in computing the period of limitation prescribed for an appeal, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of judgment

are excluded. This is the position under s. 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019]. In the application at hand, the applicant has only stated that he applied to be supplied with a copy of judgment by the DLHT. He has not shown any proof of such assertion. This is a crucial point which assists the court in determining the application.

As indicated, the complained judgment was delivered on 22/4/2022. Under Section 38 (1) of the Land Disputes Courts Act, the appeal was supposed to be filed within 60 days from 22/4/2022 or from 08/7/2022, when a copy of judgment was supplied to the applicant. In any case, the 60 days did not expire before 06/9/2022. Therefore, on 26/7/2022 when the applicant filed this application seeking for extension of time, he still had forty-one (41) days within which he could file his appeal.

I am mindful that the court has discretion to grant extension of time in applications like the present one, but I am also aware that such discretion is supposed to be exercised judiciously. This is to say, the discretion should be exercised in accordance with the rules of reason and justice and not arbitrarily. The Court of Appeal in various authorities has tried to set guidelines to be followed by the courts below it, when exercising discretion to either grant or refuse to grant extension of time.

In the case of *Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010, the Court of Appeal laid down four (4) factors to be considered before granting any extension of time:

- (a) *The delay should not be inordinate;*
- (b) *The applicant must account for all the period of delay;*

(c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;

(d) If the Court feels that there are other sufficient reasons such as existence of a point of law of sufficient importance; or the illegality of the decision sought to be challenged.

As per the records, the delay in this application was for eighteen (18) days only. This cannot be considered as inordinate delay. However, the applicant has failed to account for each day of delay. He also failed to show diligence because instead of filing his appeal within statutory time which he had, he wasted numerous days requesting for extension of time which was unnecessary. This is a form of negligence or carelessness as he was represented by an Advocate who is trusted to be knowing the law very well.

In the instant application, the applicant has not alleged any irregularities in the decision of the DLHT. As such, the fourth factor for consideration as laid down in the case of *Lyamuya (supra)*, is not applicable in this application. The law requires that for irregularity to stand as a ground for granting extension of time, the nature of the said irregularity should be apparent on the face of record. The applicant has not pointed out any irregularity, leave alone the one that is apparent on the face of record.

For the reasons stated herein above, the application fails, and is hereby dismissed with no order as to the costs.

It is so ordered.


KADILU, M. J.

JUDGE

20.03.2023.

Ruling delivered on the 20th day of March, 2023 in the presence of Mr. Lucas Ndanga, learned Advocate for the Applicant and the respondents present in person.




KADILU, M. J.

JUDGE

20.03.2023.