

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISCELLANEOUS LAND APPLICATION NO. 30 OF 2022

(Arising from the Decision of the District Land and Housing Tribunal for Tabora in Land Case No. 85 of 2020 and Decision of Ukondamoyo Ward Tribunal in Land Application No. 08 of 2020)

MAKULILO MGARULA..... APPLICANT

VERSUS

MERANIA KIBILITI..... RESPONDENT

RULING

Date of Last Order: 15/02/2023

Date of Delivery: 20/02/2023

KADILU, J.

In Ukondamoyo Ward Tribunal, the applicant herein successfully sued the respondent in Land Application No. 08 of 2020. The respondent was dissatisfied with the decision of Ukondamoyo Ward Tribunal. She appealed to the District Land and Housing Tribunal for Tabora through Land Appeal No. 85 of 2020. Decision of the DLHT in Land Appeal No. 85 of 2020 was delivered on 31/5/2021 by the honourable Chairman Waziri, M.H., who overturned the decision of Ukondamoyo Ward Tribunal by allowing the appeal.

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

seeking leave of the 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 for this application be provided for. In his affidavit, the applicant adduced the reasons for the delay as follows:

1. That, judgment of the DLHT was delivered on 31/5/2021.
2. That, upon the dissatisfaction with the decision of the DLHT, he immediately initiated the process of appeal to this court.
3. That, a copy of judgment of the DLHT was not furnished in time to enable him to file his appeal within the prescribed time.
4. That, he diligently undertook follow-ups on weekly basis to obtain the said copy of judgment, but in vain.
5. That, the said copy of judgment was supplied to him on 08/7/2021.
6. That, immediately after collection of a copy of judgment, the applicant contracted malaria which resulted into his sickness for about three weeks.
7. That, the present application was filed on 07/10/2022.
8. That, before the present application, the applicant filed in this court, Misc. Land Application No. 26 of 2021 which was struck out on 27/9/2022 due to wrong citation of the law.
9. That, the decision which is sought to be challenged contains illegalities which must be rectified by the High Court. Therefore, it is for the interest of justice that the instant application has to be granted.

The respondent opposed the application. She challenged the applicant's affidavit by stating in her counter affidavit that there was no delay in

obtaining a copy of judgment by the applicant as the same was supplied to him early on 21/6/2021. The respondent avers further that the applicant did not fell sick after collection of a copy of judgment since there is no medical proof of the assertion. She finally stated that there is no sufficient reason to grant extension of time to the applicant because he has not shown the alleged illegality in the decision of the DLHT.

When the application was called for hearing, the applicant was represented by Mr. Amosi Japhet Gahise, learned Advocate while the respondent appeared in person, without representation. The applicant's counsel prayed the court to adopted the affidavit of the applicant and reiterated its contents. Likewise, the respondent requested the court to adopt the contents of her counter affidavit. She maintained that the applicant has no reason for the delay to file his appeal so, his application should be dismissed.

I have gone through the affidavit, counter affidavit, and submissions of the parties. The issue for me to determine is whether the applicant has fulfilled the conditions justifying 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 every day of delay and give reasonable and sufficient reason for the delay. 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].

On 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."

In the application at hand, the applicant has not shown that he applied to be supplied with a copy of judgment by the DLHT. This is a crucial point which assists the court in determining the application. The complained judgment was delivered on 31/5/2021. Under Section 38 (1) of the Land Disputes Courts Act, the appeal was required to be filed within 60 days from 08/7/2021, when a copy of judgment was supplied to the applicant. The 60 days expired on 07/9/2021. Therefore, on 04/8/2021 when the applicant filed Misc. Land Application No. 26 of 2021 seeking for extension of time, he was still within time of appeal. This raises a serious question whether the applicant was really diligent in pursuing this matter.

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 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 present application was filed on 07/10/2022 while the period within which the applicant could appeal expired on 07/9/2021. Therefore, the applicant delayed to file this application for more than a year. It is undisputed that the delay was inordinate. Generally, the applicant did not account for each day of delay. He also failed to show diligence because his earlier application which was filed well within time was struck out for wrong citation of the law. This too is a form of negligence as he carelessly cited a wrong provision of the law making his earlier application defective.

The applicant alleges that there are irregularities in the decision of the DLHT calling for determination by the High Court. He did not however, describe the nature of the alleged irregularity in his affidavit or during the hearing of this application. The **Black's Law Dictionary, 9th Edn. (2004)** at pg. 906 defines the term 'irregularity' as an act which is not in accordance with the law, method or usage. That is to say, the word 'illegality' means an act that is not authorized by law. For irregularity to stand as ground for granting extension of time, there should be an error apparent on the face of record.


It is pertinent to note that in applications like the present one, the court is usually not availed with all the records for it to identify the said errors. A quick look at the affidavit of the applicant and submissions thereof, I find no proof of any error causing the alleged illegality. Since there is no substantial

proof of the alleged errors, this court cannot rule with certainty that there was illegality on the face of record concerning Land Case No. 85 of 2020. Therefore, this ground cannot be used to granted extension of time in this application.

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
20.02.2023

Ruling delivered on the 20th day of February, 2023 in the presence of Mr. Makulilo Mgarula, the Applicant and Mrs. Merania Kibiliti, the respondent.




KADILU, M. J.
JUDGE
20.02.2023.