

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

MISC.CIVIL APPLICATION No. 78 OF 2022

*(Arising from the judgment of the District Land and Housing Tribunal of Geita at
Geita in Land Application No. 120 of 2020)*

BARNABAS MHOJA MAPANDE ----- APPLICANT

VERSUS

MARTINE LUCAS KWILASA----- RESPONDENT

RULING

Last Order date: 24.04.2023

Ruling Date: 23.05.2023

M. MNYUKWA, J.

By way of chamber summons, supported by an affidavit deposed by Laurent Francis Bugoti, the learned advocate, made an application to this Court seeking for an order to extend time to appeal to this Court out of time, from the decision of the District Land and Housing Tribunal for Geita at Geita in Misc. Land Application No. 120 of 2020 which was delivered in favour of the respondent.

On the date when this application was scheduled for hearing, the respondent did not enter appearance. The applicant who appeared in



person unrepresented, prayed this court to proceed ex-parte, the prayer which was granted and the matter proceeded ex-parte against the respondent.

Briefly, it is apparent on the Court's record that, the applicant filed Misc. Land Application No. 120 of 2020 which originated from Land Appeal No. 80 of 2019. Among others, the applicant prayed before the District Land and Housing Tribunal (DLHT) of Geita to set aside its decision to dismiss the Land Appeal No. 80 of 2019 delivered on 22/09/2020, costs of the suit and any other relief that the DLHT may deem fit and just to grant. When the matter was called for the decision before Hon. Chairman, Masao, E on 1/07/2022, the same was dismissed with costs.

Aggrieved, the applicant intended to file an appeal to this Court to challenge the decision of DLHT to dismiss the Land Appeal. Unfortunately, for the reasons stated in the affidavit sworn in by Mr. Laurent Bugoti, the applicant failed to file the intended appeal within time hence the present application.

In his brief oral submissions, the applicant prays the court to adopt the affidavit filed in this Court to form part of his submissions. He submitted that, after the decision of the DLHT in Misc. Land Application No. 120 of 2020, he engaged an advocate for drawing of the necessary



documents of appeal. That, the learned advocate filed the memorandum of appeal electronically before this court to challenge the above decision which was an application to restore Land Appeal No. 80 of 2019. He went on that, the control number was sent to the advocate account which he did not engage to represent him and the advocate did not share the control number with the applicant to effect payments.

He added that, he made follow up to the court and he was informed that the control number was sent to the advocate who filed the appeal and upon consulting him, the advocate checked his account and found that the control number was sent to his account and that, when he was supplied the said control number for payment, the same was out of time. In that regard, he has to file the appeal afresh and he is already out of time and therefore, he prays this court to extend time for him to file the appeal out of time.

With that background and the submission of the applicant, the main issue for consideration and determination is whether the present application is meritorious.

In the determination of this application, the law is settled that, for the court to exercise its discretion in extending time, the applicant has to adduce sufficient reason(s) which prevented him to act within time. That



position was well elaborated by the Court of Appeal for East Africa in the case of **Shanti vs Hindocha & Others** [1973] E.A. 207 that: -

"The most persuasive reason that he can show... is that the delay has not been contributed by dilatory conduct on his part but there may be other reasons and these are all matters of degree".

In view of the above exposition of the law, the applicant submitted by giving reasons and the circumstances which led him to have failed to appeal within time. As I have earlier on indicated, the records reveals that the learned counsel swore an affidavit in support of the applicant's submissions that the delay was a technical one. With his affidavit, he also annexed annexure BMM1 which was the memorandum of appeal he intended to file, and annexure BMM2 which is a control number sent to his account which expired on 26.08.2022. Based on the reasons given, as stated by the Court of Appeal in **Regional Manager Tanroads Kagera vs Ruaha Concrete Company Ltd**, Civil Application No .96 of 2007, an application for extension of time of this kind, will not be meritorious unless the applicant has, either explicitly or implicitly, discloses evidence in the affidavit to show good cause for the delay. As it stands, the submissions by the applicant is supported by the learned counsel's affidavit that the delay was technical. As stated in the case of **William Shija and Another**



v. Fortunatus Masha [1997] TLR 213 the Court of Appeal had this to say: -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays..."

In showing that the delay was not due to negligence and out of his control, as indicated, the applicant's submission is supported by the affidavit sworn in by the counsel to whom the control number was sent to his account. Based on what has been submitted by the applicant and the affidavit deponed by Mr. Bugoti learned advocate, I agree that the delay was technical and beyond the applicant's control. In tandem with the holding in **Bharya Engineering & Contracting Co. Ltd vs. Hamoud Ahmed Nassour**, Civil Application No. 342/01 of 2017, I agree that the circumstances underpinned this application were beyond the applicant's control and sufficient to grant the application.

In the upshot and for the foregoing reasons, I grant the application with an order for the applicant to file his appeal within 30 days from today.

No orders as to costs.

It is so ordered.



M. MNYUKWA
JUDGE
23/05/2023

Court: Ruling delivered on 23rd May 2023 in the presence of the applicant and in the absence of the respondent.



**M. MNYUKWA
JUDGE
23/05/2023**