

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 11 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Kiteto at Kibaya in Land Application No. 10 of 2020)

ATHUMANI MPINA.....1ST APPLICANT

KUNDYO SAINYENYE.....2ND APPLICANT

NGOSHUKU MKARE.....3RD APPLICANT

VERSUS

NDITEENYE KESOI.....1ST RESPONDENT

MOSIPA KESOI.....2ND RESPONDENT

RULING

Date: 22/5/2023 & 8/6/2023

BARTHY, J.

The above-named applicants were among the respondents before the District Land and Housing Tribunal for Kiteto at Kibaya (the trial tribunal), following the respondents with another party not present to this matter, filing Land Application No. 10 of 2020, claiming of trespass of 100 acres of land. The appeal was lodged against the said decision, but it was struck out for being incompetent before the court.



The applicants preferred the present application under Section 41 (1) and (2) of the Land Disputes Courts Act, [CAP 216 R.E 2019], (hereinafter referred as the Act), seeking for the following reliefs namely;

- 1. That, this honourable court may be pleased to grant the applicants extension of time to appeal to this Court against the judgment and decree of the District Land and Housing Tribunal for Kiteto dated the 29th September, 2022 in Land Application No. 10 of 2020.*
- 2. That the costs of this application be provided.*

This application is supported by joint affidavit sworn by the applicants themselves. On the other hand, the respondents neither entered appearance nor lodged counter affidavit to contest the application, despite the fact that they were duly served. Hence, the hearing of the application proceeded in the absence of the respondents.

The applicants enjoyed the services of Mr. Zuberi Ngawa learned advocate. The application was disposed of orally.

In his submission in support of the application, Mr. Ngawa prayed to adopt the contents of the affidavit to form part of this submissions. He



submitted that parties to the instant appeal are in dispute over a piece of land measuring about 100 acres situated at Partimbo village.

He added that, the applicants were dissatisfied by the decision of the trial tribunal hence they lodged Land Appeal No. 163 of 2022 and they engaged Mr. Alute Mughwai to represent them.

Upon reading the memorandum of appeal Mr. Mughwai advised the applicants that the appeal was incompetent for failure to attach the decree of the impugned decision and also the applicants had not signed the memorandum of appeal. The said appeal was withdrawn on 11/1/2023 with the aim of filing a proper one.

Mr. Ngawa went further to argue that, after the appeal had been withdrawn the applicants wrote a letter requesting to be supplied with the said order which was supplied to them on 24/1/2023. He submitted that by the time the order was supplied to the applicants, the time to file memorandum of appeal had already expired.

He urged the court to grant the extension of time as there are points of law which need to be needs to be challenged by way of an appeal. He contended that, there is a good cause to allow the applicants file the appeal out of time.



He went on stating that the respondents will not be prejudiced if the order for extension of time is granted. He argued that the applicants will be seriously prejudiced if the prayer for extension of time won't be granted as their right to appeal will be rendered nugatory.

Having gone through the applicants' submission as well as the affidavit in support of the application, the sole issue for my determination is whether the applicants has advanced sufficient reason for this court to exercise its discretion for the extension of time.

This application has been preferred under Section 41 (1) and (2) of the Act. Section 41 (2) of the Act, which provides for time frame for lodging an appeal against the decisions of the District Land and Housing Tribunals in the exercise of their respective original jurisdictions to be lodged to the high court within 45 days of the impugned decision.

On the other hand, Section 41(2) of the Act, it empowers the court to grant an extension of time to lodge an appeal upon good cause shown. The said provision provides that;

*(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.*

[Emphasis added].

From the foregoing provision, before the court can exercise its discretion for extension of time, the applicant must advance good cause. But the provision of the law quoted above does not state what amounts to good cause.

In order to establish what amount to good cause, the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal held that;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion"

It follows therefore that what constitutes good cause depends on the circumstance of each case. However, in order to determine whether the applicant has advanced good cause certain factors should be taken



into consideration. Amongst the factors to be taken into account were succinctly stated in the case of **Benjamin Amon v. Republic**, Criminal Application No. 106 of 2018, Court of Appeal at Dar es salaam quoting various cases with approval held that;

"(a) The applicant must account for all the period for delay;

(b) The delay should not be inordinate;

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

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

In the instant application, it is not in dispute that the applicants lodged their first appeal which was within time prescribed by the law, but it was withdrawn on 13/1/2023 for being incompetent before the court. The applicants maintained that, they applied for the court's order that struck out the appeal and it was supplied to them on 24/1/2023 as stated on paragraph 8 of the affidavit.

I have taken into account the fact that the applicants' first appeal



was lodged timely but it was struck out for being incompetent. The reasons which culminated to incompetency of the applicants' appeal were wholly attributed by the applicants themselves as they did not attach the decree of the impugned decision of the trial tribunal and also they did not properly sign the memorandum of appeal.

I have taken into account the fact that the applicants' appeal was struck out on 11/1/2023 and the order was supplied to the applicants on 24/1/2023. Counting from the date the applicants appeal was struck out to the date the instant appeal was lodged, it is about 22 days have lapsed.

The affidavit in support of the application is conspicuous silent on what transpired for the whole 22 days period. The applicants suggested that they applied for the said order on 13/1/2023, but there is no proof that the applicants' advocated had indeed requested for the said order.

The applicants should have strictly accounted for the period from 24/1/2023 after they were supplied with the copy of the order to 17/2/2023 when this application was filed before this courts. It is settled principle that in application for extension of time the applicant is required to account on each day of the delay.



The need to account for each day of the delay has been restated in a number of cases. To mention but few, **Elifazi Nyatega & 3 Others v. Caspian Mining Ltd**, Civil Application No. 44/08 of 2017 and **Moses Mchunguzi v. Tanzania Cigarette Co. Ltd**, Civil Application No. 531/4 of 2016, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007, (all unreported). In the latter case the Court of Appeal emphasized that: -

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

In the instant matter, the applicants have failed to account for each day of the delay from the date they were supplied with the order that struck out their appeal, to the date they lodged the instant application.

I have also taken into account the argument by Mr. Ngawa that there are points of law which need to be addressed by the court in the intended appeal. This is also stated under paragraph 12 of the affidavit in support of the application in which the applicants claim that there are points of law of sufficient importance and worthy of consideration by this court.



However, it is neither the affidavit in support of the application nor the submissions of Mr. Ngawa that pointed out specifically the points of law of sufficient importance worth of consideration by the court.

To constitute illegality the same must be apparent on the face of record and not that will be discovered by long drawn arguments and process.

This principle was underscored by the Court of Appeal in the case of The Principal Secretary Ministry of Defence and National Service and National Service v. Devram Valambhia [1992] TLR 387 and Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania (supra). In the latter decision the Court stated;

*"The court emphasized that **such point of law must be that "of sufficient importance"** and I would add that **it must be apparent on the face of the record**, such as the question of jurisdiction; **not one that would be discovered by long drawn argument or process.**"*

[Emphasis added].



In the instant application the points of law complained of were not pointed out by the applicants hence the court cannot do a guess work or else their existence can only be determined after long drawn arguments.

Consequently, I find that the applicants have not been able to advance good cause for the court to grant an extension of time. The application lacks merits and it is accordingly dismissed with no order to costs as the respondents never entered appearance.

It is so ordered.

Dated at Babati this 8th June 2023.



G. N. BARTHY,

JUDGE

Delivered in the presence of Mr. Zuberi Ngawa the counsel for the applicants and in the absence of both parties in person, but in the presence of the relatives of the respondents Meshack Lemburis and another.