

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)

ANTHONY CHUI.....1ST APPLICANT

ISSA EMMANUEL.....2ND APPLICANT

VERSUS

MESHACK LEMBURIS.....RESPONDENT

RULING

6/6/2023 & 8/6/2023

BARTHY, J.

By chamber summons supported by joint affidavit, the applicants have moved the court under Section 41(1) (2) of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) seeking for the following orders;

- 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 30th September, 2022 in Land*



Application No. 6 of 2020.

2. That the costs of this application be provided.

The respondent lodged counter affidavit to contest the application.

At the hearing, in appearance was Messrs. Zuberi Ngawa and Ibrahim Mohamed Massawe learned advocates appearing for the applicants and the respondent respectively. The application was disposed of orally.

Submitting in support of the application, Mr. Ngawa he prayed to adopt the contents of the joint affidavit to form part of this submissions. He went on arguing that, the applicants and 11 others were unsuccessful respondents against the respondent herein before the trial tribunal over a dispute on a piece of land measuring approximately 150 acres situated in the village of Partimbo in Partimbo ward.

He added that, the applicants being dissatisfied with the decision of the trial tribunal they filed an appeal to this court registered as Land Appeal No. 165 of 2022 at Arusha sub-registry.

He contended that, the memorandum of the appeal was prepared by the applicants themselves with the assistance of the para-legal and it was filed on 20/10/2022. After the filing of the appeal, the applicants



instructed Mr. Alute Simon Mughwai advocate to represent them before the high court.

Upon reading the memorandum of appeal, Mr. Alute Simon Mughwai, the learned advocate found the appeal was incompetent for failure to attach the decree of the impugned decision and the petition of appeal not signed. So, with the permission of the parties he sought to withdraw the said appeal with the view of filing the proper one. Thus, the appeal was struck out with no orders to costs.

Then a requested to be furnished with the copy of the ruling was made on 6/3/2023 and the same was supplied on 14/3/2023.

He went on arguing that by the time the copy was supplied to Mr. Aluta the learned advocate, the time prescribed for lodging the memorandum of appeal had already expired.

Mr. Ngawa stated further that, the High Court may for good and sufficient cause extend time for filing an appeal, either before or after the that period had expired as provided on the proviso to Section 41(1)(2) of the Act.

He added that, this court and the Court of Appeal have frequently held that, there are no hard and fast rules on what constitutes good and sufficient cause. As it is always the question of facts to be determined by



this court according to peculiar circumstances of each case.

To buttress his arguments, he referred to the decision of the Court of Appeal in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016, Court of Appeal at Dar es salaam (unreported), where on page 6 the court held that, in determining whether good and sufficient cause is disclosed the court is enjoined to consider inter alia the four factors mentioned therein.

In applying the above factors for consideration of this court, he submitted that the applicants have shown good sufficient cause to this application. He added that, the applicants had filed land appeal 167/2022 within prescribed time of 45 days from the date of the impugned decision.

He added, the reasons for the delay and the diligence of the applicants have to be considered in the light of the circumstances for this case. As soon as the land appeal was struck out, the request for the copy of the said ruling was made which is mandatory to be attached on this application. Through the advocate they have filed this application on 31/3/2023 after receiving the said ruling.

He was of the view that, the delay is only technical and not real. To fortify his argument the learned advocate cited the decision in the case of **Fortunatus Marsha v. William Shija and another** [1997] TLR 154.

Imploring as to whether the respondent will be prejudiced if this application will be allowed, he invited this court to consider the decision in the case of **Wambele Mtumwa** (supra).

Mr. Ngawa argued that, if the application will not be granted, the applicants will be barred from challenging the decision of the tribunal by way of an appeal and the applicant's right will be nugatory.

He added that, there are points of law as shown on the joint affidavit of the applicants which are worthy of consideration by this court.

On reply Mr. Massawe contended that, the applicants have not shown any good sufficient cause worth this application to be granted by this court. He referred to paragraph 4 of the joint affidavit on the claim that the memorandum of appeal was prepared by the lay persons.

Mr. Massawe was firm that, the law is clear that the procedures must to be followed and being a lay persons will not exclude them from the requirement of the law.

To buttress his arguments, he referred to the case of **Ally Mtambuka v. Omary Limbinungu**, Misc. Civ Application No. 4 of 2017 page 44 and 45 [2008] (TZHC) 31 where the court held that, the ignorance of the law is not an excuse.



He was firm that, applicants did not follow the procedures that led to their appeal being struck out. To this argument, he referred to the case of **Resendo Ayres Ribeiro v. Olivia Dalitia Siqyeira** (1934) EACA 37 where the court held that, a mere misunderstanding of the appeal rules will not amount to special circumstances to warrant an extension of time to appeal.

He maintained his arguments stating that, the applicants do not have sufficient cause for this application to be granted.

On further submission Mr. Massawe stated that, on the requirement to account for each day of delay, the applicants have deposed on their counter affidavit that, they were waiting to be supplied with the copy of the ruling of the court which was supplied on 14/3/2023 then this application was filed on 31/3/2023.

He maintained that counting from the date the applicants were supplied with the said copies, the applicants have delayed for almost 17 days which was not accounted for. He contended that it would have been reasonable if it was just two or three days delay for consideration. He therefore urged the court to dismiss the application with costs.

On a brief rejoinder Mr. Ngawa essentially reiterated his submission in chief made earlier, however with regard to the issue of delay and



accounting for each day he stated that, the ruling of the land appeal No. 167 of 2022 was obtained on 14/3/2023 and this application was filed online on 31/3/2023.

Therefore, the period of delay was rather 13 days as the application was filed online on 27/3/2023 and not 31/3/2023.

He went further stating that the, the applicants reside at Kiteto while the advocate is based in Arusha. Therefore, those 13 days were for communication between the clients and advocate for them to come and sign the documents.

To conclude he maintained his arguments in chief and his prayers.

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

As rightly submitted by Mr. Ngawa that, the proviso to Section 41(2) of the Act, empowers the court to grant an extension of time to lodge an appeal out of time upon good cause shown, as it states as follows;

*(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. However, the law does not state what amounts to good cause.

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

"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. From decided cases, 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 by Mr. Ngawa in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis** (supra) in which the Court of Appeal while referring to the decision of **Bertha Bwire v Alex Maganga** Civil Reference No. 7 of 2016 that;

(a) reasons for the delay,

(b) The length of the delay,

(c) Whether the applicant was diligent and the degree of prejudice to the respondent if time is extended.

Other reasons to be considered are; whether the applicant has accounted for each day of delay and whether there is any point of law of sufficient importance. See the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

Guided by the above factors, it is not in dispute that the applicants had lodged Land Appeal No. 167 of 2022 to challenge the impugned decision of the trial tribunal. It is not in dispute that the said appeal was struck out on 21/2/2023 for being incompetent.



The reasons advanced by the applicants leading to their appeal struck out as stated on paragraph 6 of the joint affidavit are that the decree was not attached to the said appeal and also the memorandum of appeal was not properly signed by the applicants.

In the present matter, the applicants made their point that the former Land appeal No. 167 of 2022 was filed within time. It was the applicant's counsel who moved the court on the incompetence of the appeal as a result the matter was struck out.

There is however the gap of 13 days that was admitted by Mr. Ngawa to have been delayed from the time the applicants were supplied with the copy of the ruling of the court to the time this application was lodged.

Mr. Ngawa had claimed that 13 days of delay were used to prepare the documents and have the applicants who reside at Kiteto to travel to the advocate's office to sign the documents.

I have seriously taken into account this argument. First as rightly submitted by Mr. Ngawa the application was lodged online on 27/3/2023 and filing fee was paid on 30/3/2023 hence counting from 14/3/2023



when the said order was supplied to the applicants, to the filing date of this application about 13 days had lapsed.

However, the affidavit in support of the application is conspicuous silent as to what transpired within the period of 13 days as flaunted by Mr. Massawe the counsel for the respondent.

The arguments by Mr. Ngawa that 13 days were for communications between the applicants and their advocate are not only an afterthought as they do not feature on the affidavit but also not true.

I have noted that the joint affidavit was signed and verified by the applicants on 15/3/2023 just a day after being supplied with the purported ruling of the court.

Being mindful that in determining this application the court is bound with the pleadings. Mr. Ngawa's reasons for 13 days delay was not deposed in the supporting joint affidavit.

It is the principle that, the parties are bound by their own pleadings, as decided in the case of **Astepro Investment Co. Ltd v. Jawinaa**, Civil Appeal No. 8Of 2015 (CAT-Unreported) as cited with approval in the case of **Leonard Nvanauve v. Republic**, Misc. Criminal Appeal No. 30 of 2016, which underscored the importance of sticking to the pleadings.



Similarly, in the case of **African Banking Corporation v. Sekela Brown Mwakasege**, Civ. Appeal No. 127 of 2017, High Court at Dar es salaam this court held that, "*there is a general principle that, the court cannot consider or deal with issues that were not canvassed and pleaded*".

It is the long-established principle that, in application for extension of time, the party is required to account on each day of delay. The emphasis to this requirement 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].

The court therefore finds that the delay of 13 days has not been accounted for.



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.

In the present matter neither the affidavit in support of the application, nor in the submissions made by Mr. Ngawa had 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. The issue of illegality 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;



