

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC. LAND APPLICATION No. 10 OF 2023

(Arising from Land Appeal No. 60 of 2021 before Kilombero/Malinyi District Land and Housing Tribunal, originating from Ward Tribunal for Mofu in land case No. 12 of 2021)

SAMWEL LUGENDO..... APPLICANT

VERSUS

EDSON LIHELUKA RESPONDENT

RULING

Hearing date on: 26/05/2023

Ruling date on: 29/05/2023

NGWEMBE, J:

The applicant is seeking for extension of time within which to lodge an appeal against the judgement and decree of the District Land and Housing Tribunal in Land Appeal No. 60 of 2021 which was delivered on 27/7/2022. Such decision aggrieved the applicant and after certain processes, he found himself out of time to appeal to this court, hence this application for extension of time.

As a matter of principle, application of this nature is purely court's discretion which discretion is exercised judiciously. Above all, the applicant has uncompromised duty to establish sufficient reason (s), for such delay. In disclosing those reasons for delay, also he is duty bound to account for every day of delay.



More importantly, is the question of what amounts to a sufficient cause? Obvious no statutory interpretation is provided for, but suffice to note that, through various precedents, this court and the Court of Appeal have provided good number of factors to be considered, including but not limited to promptness, diligence and provision of special circumstances which prevented the applicant to realize his rights of appeal timely. The most persuasive reason for delay is that, he was not the source of that delay. (See the case of **Dar Es Salaam City Council Vs. Jayantilal P. Rajani (Civil Application No. 20 of 1987) [1988] TZCA 26**. More enlightenment was made in the case of **William Shija Vs. Fortunatus Masha [1997] T.L.R. 213 (CA)** where *inter alia* was held: -

"It is common knowledge that it is a matter of discretion on the part of the Court to extend time in which to file the appeal or notice of appeal. That such discretion is to be exercised judicially is also elementary. It is however, to be observed that in the exercise of such power, the requisite condition is that sufficient reason is to be given."

Rightly so, circumstances like delays caused by failure of the court to furnish copies of judgement and proceedings to the applicant, and delays caused by special circumstances like being confined in prison, sickness, absence from the country, and if the nature of dispute demand a superior court to decide upon it, (the list has never been exhaustive), rather this court and the Court of Appeal have unanimously ruled that the trial court may decide based on the prevailing circumstance of each case.



Having so highlighted those fundamental principles of empowering this court to exercise its discretionary powers, the question remains, whether those principles are applicable in this application herein? To answer properly this question, I now need to highlight on what the applicant and the respondent have pleaded and argued on the hearing date.

In a nutshell, the applicant pleads in his affidavit specifically on paragraphs 4, 5 and 6 reasons for delay. That he appealed against the offending judgement to this house of justice timely, but in the cause, such appeal was struck out due to wrongly filing at this court instead of filing it to the tribunal. Consequently, he found barred to refile it afresh.

The learned advocate Jackson Mashankara rightly submitted along lines of the same reasons and rightly pointed out section 21 (2) of **The Law of Limitation Act**, that time spent in prosecuting the appeal, which ended up being struck out due to irregularities of proper filing should be excluded. However, even after excluding that time, yet the applicant was out of time. Hence this application for extension of time is proper.

On the other side, advocate Richard Giray for the respondent counted the application as lacking seriousness on the side of the applicant and that no good reason is advanced to support the prayer for extension of time. He rightly cited the famous case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania (Civil Application No. 02 of 2010) [2011] TZCA**, where the above principles were discussed in details. He insisted that, neither the advocate nor his client

accounted for every day of delay before this court may exercise its jurisdiction to extend time. Equally he submitted that, the applicant has failed to disclose the alleged illegality, which must be on the face of the record as opposed to vigorous legal interpretation.

Much as I would agree with the submissions of both learned counsels, yet the question for consideration in respect of this matter is the need to rest that land dispute conclusively, and allow the disputants be relieved from such burden with a view to take another course of life.

Undoubtedly, the purpose of having time limitation in every action is unfettered and need not be overemphasized. In this issue I need not to invent the wheel, while is already in use. The Court of Appeal in **Civil Appeal No. 19 of 2016 Barclays Bank (T) Ltd Vs. Phylisianh Hussein Mcheni** at page 13, quoted the book of C. K. Takwani writes in Civil Procedure, with Limitation Act, 1963, (7th Edition), at page 782 observed: -

"Statutes of Limitation are based on two well-known legal maxims:

- (i) The interest of the State requires that there should be an end to litigation (**interest reipublicae ut sit finis litium**); and*
- (ii) The law assists the vigilant and not one who sleeps over his rights (**Vigilantibus non dormientibus jura – subveniunt**)"*

In the same vein, the Privy Council in **Ratnam Vs. Cumarasamy and Another [1964] 3 All ER 933** at page 935 observed: -

"The rules of court must prima facie be obeyed and, in order to justify a court in extending time during which some step-in procedure requires to be taken there must be some material on which the court can exercise its discretion. If the law were otherwise any party in breach would have an unqualified right to extension of time which would defeat the purpose of the rules which is to provide a timetable for the conduct of litigation".

I fully subscribe to the above principles, with critical minds that, I am not blind on exceptional circumstances up on which, time limitation may be extended based on the circumstances and facts so alluded above. By emphasis, same may be repeated herein that; when the applicant's delay was caused by good cause; or the delay was caused by inaction of the court in providing necessary documents; or illegalities apparent on the face of record; or existence of special circumstances discussed above; or in any way the delay was not caused by the applicant. As such, good causes for delay always exonerates the applicant from being the source of delay.

All being equal, I find no blame to the applicant rather he has built his case to the satisfaction of this court, that the delay was due to vigorous prosecution of appeal in a right forum but wrongly filed. That instead of filing the appeal as directed by law, that is, before the District Land Tribunal, he filed it in this house of justice contrary to law. Consequently, his appeal, though was timely filed in court, for that reason the same was struck out. When he ventured to reinstitute his appeal in this court, alas he was time barred, hence this application.



What was obtaining in this matter which made the applicant fall in the web of time limitation is what in law may be referred to as technical delay. This is because he was not indolent or negligent but exhibited diligence all through. In the case of **Fortunatus Masha Vs. William Shija and Another [1997] TLR. 154**, the Court of Appeal expounding technical delay ruled thus: -

"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 the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In this circumstance an extension of time ought to be granted."

Likewise, in the case of **Bank M (Tanzania) Limited Vs. Enock Mwakyusa Civil Application No. 520/18 of 2017**, a technical delay was excused. Collecting from the above, it is the spirit of the law that technical delay deserves a pardon and much consideration be paid to dispensation of justice on merit in convenient cases.

Considering wholistically on what happened to the applicant until he found himself out of time limitation, I think it was contributed by many factors. This court cannot point fingers to the applicant as sole source of delay, rather the delay was contributed by many things including the nature of dispute itself, that it requires the matter be



determined conclusively. Always land disputes should be decided fairly as opposed to technicalities. In respect to this application, I find justice demand the applicant should be allowed to actualize his intention to appeal to this temple of justice. Accordingly, I proceed to grant the applicant an extension of time for the period of 20 days to actualize his intention of appeal.

Order accordingly.

Dated at Morogoro in chambers this 29th May, 2023.



P. J. NGWEMBE

JUDGE

29/5/2023

Court: Ruling delivered at Morogoro in Chambers on this 29th day of May, 2023 in the presence of Mr. Michael Michael Chami, Learned Counsel holding brief for Mr. Marwa Masanda, Learned Counsel for Applicant and Mr. Richard Gilai, Learned Counsel for Respondent

Sgd: A.W. Mmbando, DR

29/05/2023

Court: Right of appeal to the Court of Appeal explained.



Sgd: A. W. Mmbando, DR

29/05/2023