

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. LAND APPLICATION NO. 8 OF 2022

(Originating from Land Application No. 110 of 2017, Songea District Land and Housing Tribunal)

REMIGIUS NGUNJA..... 1ST APPLICANT

FABIAN MPONJI 2ND APPLICANT

VERSUS

BENEDICT LUAMBANO MABALANGANYA RESPONDENT

RULING

15/05/2023 & 13/06/2023

E.B LUVANDA, J

This is the ruling in respect of the application for extension of time to file an appeal out of the time prescribed by the law. The application was made under the provision of section 41(2) of the Land Dispute Courts Act [Cap 216 Revised Edition 2019] and supported with an affidavit sworn by Marco J. Kisakali learned advocate representing the Applicants herein. In the affidavit in support, the Counsel for the Applicants deposed that apart from being delayed by the tribunal for failure to supply them with the necessary documents for appeal (technical delay) the counsel told this court that the trial tribunal was tainted with

illegality and irregularities whereby the respondent herein failed to describe the disputed land according to the requirement of the law.

On other hand the respondent filed the counter affidavit to oppose the application based on the reason that, the time to appeal begins to run from the date when the applicants were supplied with necessary documents for appeal. The Respondent stated further that, on the alleged date the matter was fixed for ruling and not mention and the applicants and their counsel was supposed to be present unless with leave of the court or notice of absent otherwise it is lack of diligence.

Parties agreed to argue this application by way of written submissions. Both parties were represented respectively. The applicants were represented by Mr. Marco J. Kisakali learned Advocate and Mr D.P. Ndunguru learned Counsel appeared for the Respondent

The counsel for the applicants submitted that, the applicants have reasons to be considered by this court on exercising its discretion power for extension of time; namely, the delay to be supplied with copies of judgement, decree and proceedings from the trial tribunal, irregularities and illegality of the proceedings, technical delay, great chance of success and being a constitutional right.

The counsel for the applicants acknowledged the existence of the guided principle which have been established for determination of application which he alluded that, depends on the circumstances of each cases including; the length of delay, the reasons for delay, the decree of prejudice to the respondent if the application is granted and whether it raises any point of public importance or illegality in the decision. To support his stance, he cited the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Assossiation of Tanzania**, Civil Application No. 2 of 2010, and **Stephen Ngalambe v. Onesmo Ezekia Chaula and Another**, Civil Appeal No. 27 of 2020 at page 12.

The counsel for the applicants argued that this application was instituted after previous similar application was struck out for being incompetent. It is the learned counsel opinion that the applicants have the right to institute another application.

The counsel for the applicants submitted that the applicants requested the certified copies of the decision on the same date when it was delivered on 7th December, 2021. The applicants wrote a reminder letter on 28th February, 2022 and the last document was supplied on 7th March, 2022. It was more than 45 days out of the time to appeal as prescribed by the law. He decided to apply for the extension of time as

provided under the provision of section 41(2) of the Land Disputes Courts Act (*supra*) and citing, **The Registered Trustees of the Evangelical Lutheran Church in Tanzania Southern Diocese v. Emeliana Petro Msige**, Land Appeal No. 13 of 2018, HC at Iringa, to support his submission.

Also, the counsel for the applicants submitted that there is illegality of failure to describe land as per law where the respondent failed to describe the land in dispute. It is the applicant's opinion that failure to describe the land in dispute will lead to the endless dispute due to the unexecutable decree. The learned counsel stressed that it is a trite practice that once there is illegality apparent on point of law then the appellate court has duty even if it means extending time for purpose of ascertaining the point if the alleged illegality be established and take appropriate measure. He cited the case of **Principal Secretary, Ministry of Defence, and National Service v. Devram Valambhia** [1992] TLR 185.

The counsel for the applicants submitted that the first Misc. Application No. 1 of 2022 was struck out for being incompetent and thus the rights of the parties were not finally determined. The learned counsel believes that the applicants have great chance of success in the intended appeal if this application will be granted, taking into consideration that granting

the extension to the applicants will not prejudice the respondent right. The counsel prayed the applicant's prayer be allowed with cost.

In response the learned counsel for the respondent submitted that the reasons advanced is not sufficient reason for extension as the time of limitation start to accrue from the date when the applicant was supplied with the copies of the judgement and decree, therefore extension of time is not required for the application, citing **Alex Senkoro and 3 Others v. Eliambuya Lyimo (an Administrator of the Estate of Fredrick Lyimo, Deceased)** Civil Appeal No. 16 of 2017 (unreported).

Submitted that the issue of irregularity and illegality of proceedings of the tribunal, it is not correct because what is alleged for is not irregularities but a fact of the case which calls for evidence and the same cannot be challenged at this stage of appeal because it was not raised at the trial , to support his submission he cited the case of **Georgia Celestine Mtikila v. Dar es Salaam Nursery Scholl and Another** [1998] TLR 512.

On technical delay, the counsel submitted that there is no explanation from the counsel for the applicant which calls for technical delay to be reason for delay. Also, the counsel submitted that the great chance of success is not a good case for extension of time because what the

applicant ought to raise is reason why he was late to appeal and on the other part that it's a constitutional right is not denied but the said right had to be exercised in accordance with the law and the law requires the applicant to exercise his constitutional right within 45 days , he cited the provision of section 41(2) of the Land Dispute Courts Act [Cap 216 Revised Edition 2019] to buttressed his submission. The learned counsel commended that otherwise, the court innocently will presume he waived his right by failure to appeal on time.

In the affidavit in support, the applicant deposed facts in respect of chronological events in particular perplexing technical delay with eventuality culminating to this application for extension of time. According to the averment in affidavit, after delivery of judgement on 7/12/2021 on the same date he applied for certified copies of judgement, decree and proceedings which was followed by a polite reminder on 28/02/2022, 2/3/2022 and eventually on 7/3/2022 was supplied the same. He then filled Miscellaneous Land Application No. 1/2022 it was on 8/2/2022 and ruling was delivered in his absence on 27/05/2022.

Acting on the information obtained from the Counsel for the Respondent, that Applicants were granted an extension of ten days, the later alleged to have reacted by filling Land Appeal No. 3/2022 on the

same day he alleged to have obtained the information, to wit on 31/05/2022. That on 22/08/2022 he conducted perusal of the file only to discover that the said application for extension of time to wit Miscellaneous Land Application No. 1/2022, was struck out. On 24/8/2022, he wrote a letter for withdrawing Land Appeal No. 3/2022 grounding it being misconceived, which was formerly withdrawn on 25/8/2022. He pleaded that the delay for appealing was not attributed by the Applicants but prolonged process to obtain certified copies of the decree and proceedings from the trial tribunal, also technical delay for filling Misc. Land Application No. 1/2022 which was later struck out on 27/5/2022 and conduct of Land Appeal No. 3/2022 ended being withdrawn on 25/8/2022.

The above narration to my view cannot be said that the delay was attributed with lack of diligence as countered for by the Respondent. To my opinion the Applicants have managed to demonstrate on how they have been keen to take necessary steps to remedy the situation promptly without even a single day of delay. Importantly, records of Misc. Land Application No. 1 of 2022 revealed that it was struck out by this Court following the invitation by the learned Counsel for the Respondent who fronted and stressed his argument that the Applicants were supposed to file an appeal right away on the same date they

obtained certified copies of judgement, decree and proceedings instead of seeking extension, on account that after being supplied with copies, there are rules for automatic exclusion of time. Certainly true, but by leaning to that invitation, it automatically entrapped the Applicants and subjected them to cumbersome and protracted procedures, because at that time when Misc. Land Application No. 1/2022 was struck out on 27/5/2022, it means the Applicants were rendered helpless for being out of time for an aggregate of 60 days, counting from 7/3/2022 when the Applicants obtained copies of proceedings, judgement and decree.

In so far Misc. Land Application No. 1/2022 was not determined on merit, therefore, there is no hurdle or floodgate for entertaining the instant application.

I therefore grant the Applicants an extension of 21 days to present their appeal which will commence running on the date of delivery of this ruling.

The application is granted. I make no order to costs.

 E.B. LUVANDA
JUDGE
13/06/2023