

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

MISC. LAND CASE APPLICATION NO. 9 OF 2022

(C/F Misc. Land Appeal No. 31 of 2020 in the High Court of United Republic of Tanzania at Arusha, originating from Land Application No.4 of 2019 at the Distirct Land and housing Tribunal of Mbulu at Dongobesh)

JACOB BURA APPLICANT

Vs

BANGA BAYORESPONDENT

RULING

*Date of last order:27-4-2023
Date of Ruling:1-6-2023*

B.K.PHILLIP,J

This application is made under section 11 (1) of the Appellate Jurisdiction Act (Cap 141 R.E.2019). The applicant prays for the following order;

(a) That, this honourable Court be pleased to grant an order for extension of time for filing an application for obtaining a certificate on point of law out of time in respect of Misc. Land Appeal No.31 of 2020 dated 31st day of August 2022.

The application is supported by an affidavit sworn by the applicant. The Respondent filed a counter affidavit in opposition to the application.

Before going to the argument raised by parties, let me give background to this application, albeit in briefly. The respondent herein sued the applicant before the Ward Tribunal of Maranga vide Land Application No.04 of 2019 claiming for ownership of the land alleged allocated to him in 1994 by the village council of Gwandumehhi. Upon receiving evidence from both sides, the Ward Tribunal decided the matter in favour of the appellant. Aggrieved by the decision of the Ward Tribunal, the respondent appealed to the District Land and Housing Tribunal for Mbulu (" DLHT") which overturned the decision of Ward Tribunal. It decided the appeal in favour of the respondent. Dissatisfied by the said decision of the DLHT , applicant lodged his appeal to this Court vide Misc. Land Appeal No.31 of 2020 which is subject of this application. His appeal did not sail through. It was dismissed with costs on 31st August 2022. Applicant is aggrieved with the dismissal of his appeal and wants to appeal to the Court of Appeal but he has found out that he is time barred since he did not obtain a certificate on point of law for appealing to the Court of Appeal within the time prescribed by the law hence , he lodged the instant application.

In this application both the applicant and respondent appeared in person, unrepresented. The application was heard viva voce.

The applicant started his submission by praying to adopt the contents of his affidavit to form part of his submission. His brief submission was to the effect that he was dissatisfied with the decision of this Court Hon. (Robert, J) in the aforesaid Misc.Land Appeal No.31 of 2020. He prayed his application to be allowed.

In rebuttal , the respondent adopted the contents of his counter affidavit to form part of his submission. He went on submitting that the applicant has no good reason(s) for moving this court to grant this application. The reason for delay stated by the applicant in his affidavit to wit; financial constraints is not a good reason for this court to grant this application. He insisted that all human beings are equal and financial constraints is experienced by everybody not the applicant alone. He pointed out that the applicant is out of time for eight months which is a very long period. He was of the view that the applicant has not been serious in the prosecution of his case. He prayed this application to be dismissed with costs.

In rejoinder, the applicant submitted that he requested to be supplied with the copy of judgment and decree on 20th September 2022. He does not remember the date he was supplied with the copy of the judgment.

Moreover, he submitted that financial constraints is not experienced in the same way by all people. He had serious financial constraints since he is the only bread winner in his family. Also, has responsibility of paying school fees for his children. He prayed this application to be allowed.

I have carefully gone through the contents of the applicant's affidavit, respondent's counter affidavit as well as considered the rival arguments made by parties. My task in this application is to determine whether or not the applicant has adduced good cause for delay in filing the application for obtaining a certificate on point of law.

It is a trite law that in an application for extension of time the applicant has to account for each day of delay by adducing good cause for the

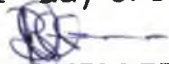
delay. This Court has discretional power to grant the extension of time or refuse to do so. However, such a discretion has to be exercised judiciously. [See the case of **Lyamuya Construction Co. Ltd Vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010** (unreported)]. It is not in dispute that Misc. Land Appeal No.31 of 2020 was dismissed on 31st August 2022. The applicant deponed that after dismissal of the said Misc. Land Appeal No.31 of 2020 he immediately filed a Notice of Appeal. A receipt for filing a Notice of Appeal and a letter for request to be supplied with the certified copies of judgment and proceedings dated 20th September 2022 is annexed to the applicant's affidavit.

Counting from 31st August 2022 when the applicant's appeal was dismissed to 11th January 2023 when the applicant filed this application more than four months lapsed which need to be accounted for. As alluded earlier in this ruling the only reason advanced by the applicant for delays explained herein is financial constraints. The pertinent question here is, do financial constraints constitute a good reason for delay in taking appropriate legal steps? In my settled opinion the same is not a sufficient reason since it is a general excuse which cannot be substantiated thus, it is not prudent for this court to rely on such a reason for granting extension of time.

In addition to the above, I have noted that the applicant did not state the date he was supplied with the copies of judgment and proceedings, consequently this court has been denied the opportunity to fairly gauge the delay in taking the necessary legal steps. This prove the

respondent's assertion that the applicant is negligent. All in all, in my considered opinion the delay in this matter is inordinate and the applicant has not adduced good cause to move this court to grant the orders sought in this application. Thus, this application is dismissed with costs.

Dated this 1st day of June 2023



B.K.PHILLIP

JUDGE

