

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA

MISC. LAND APPLICATION NO. 165 OF 2022

*(C/F Misc. Land Application No. 132 of 2020 High Court of the United Republic of Tanzania at Arusha,
Original Application No. 150 of 2020 District Land and Housing Tribunal of Arusha)*

AHMAD ALI MOLLEL APPLICANT

VERSUS

REHEMA ALI MOLLEL RESPONDENT

RULING

24th May, & 30th June, 2023

TIGANGA, J.

The applicant is seeking for extension of time so that he can file his appeal to this Court against the decision of the District Land and Housing Tribunal of Arusha (the trial tribunal) in Application No. 150 of 2020 delivered on 29th June, 2022.

The application was made through a chamber summons made under section 41 (1) (2) of **The Land Courts Disputes Act**, [Cap 216 R.E. 2019] and section 14 (1) of the **Law of Limitation Act**, [Cap 89 R.E 2019] and is supported by applicant's sworn affidavit.

According to his sworn affidavit in support of the application, the applicant deponed that, after the trial tribunal had delivered its judgment on 26th June, 2020, he could no longer get in touch with his Advocate Mr. Ngemela. Thus, he had to travel from Zanzibar to Arusha to make a physical follow-up and got a copy of judgment on 29th July, 2022. However, the decree was issued on 29th August, 2022 hence, he wrote a letter to the court asking for leniency, and on 05th September, he lodged an application for extension of time before this Court.

On 10th October 2022, before Hon. Philip, J. it was discovered that a 2nd respondent, namely Swalehe Mohamed Elusaidy, was mistakenly added as a party in the copy of the judgment while he was removed during trial at the trial tribunal. He, therefore, prayed to withdraw the application with the liberty to refile so that he can make amends and file a proper application. The same was granted and the order was issued to him on 1st November, 2022 he thereafter prepared and filed this application on 3rd November, 2022. According to him, the delay was not due to negligence but challenges that were out of his control.

Opposing the application, the respondent filed a counter affidavit noting some of the applicant's claims and disputing others while putting him

to strict proof. During the hearing of the application which was by way of written submissions, the applicant was represented by Mr. Gabriel Rwahira whereas the respondent was represented by Mr. Zuberi Ngawa, all learned Advocates.

Supporting the application, Mr. Rwahira, submitted that, for the extension of time to be granted, the applicant must show sufficient cause such as accounting for all periods of delay, the delay should not be inordinate, the applicant must show diligence and not apathy and if the court feels that the reasons are sufficient will use its discretion and grant extension as held in the case **Dar es Salaam City Council vs Jayantilal P. Rajani**, Civil Application No. 27 of 1987 and **Eliakim Swai & Another vs Thobias Karawa Shoo**, Civil Application No. 2 of 2016.

He averred that, since when the trial tribunal's decision was delivered on 26th June 2022, the applicant had acted diligently in trying to file his appeal on time but due to challenges he faced he did not. That, when he managed to file the initial application for extension of time to file an appeal out of time, the same had errors as deponed hereinabove hence he withdrew the same with liberty to refile. Further to that, he said after the order to withdraw was granted on 02nd October 2022, but he received a copy of the

said order on 01st November, 2022 and filed the current application on 03rd November, 2022.

Taking into account that he stays in Zanzibar, and there was a movement to and from Arusha-Zanzibar the delay was not intentional, hence this court should invoke its discretion and grant him extension of time. He referred the Court to the case of **Elly Peter Sanya vs Ester Nelson**, Civil Appeal No. 151 of 2018, CAT at Mbeya (unreported) where technical delay was considered as a sufficient reason to amount granting extension of time. He prayed that, this Court grant him extension of time as prayed.

Opposing the application, Mr. Zuberi submitted that, the applicant has neither accounted for his delay nor showed sufficient cause for this Court to grant him extension of time. He cited the case of **Tanga Cement Company Ltd vs Jumanne Masangwa & Amos Mwalavanda**, Civil Application No. 6 of 2001 where it was held that, what amounts to sufficient cause has not been defined but a myriad of facts have to be taken into account for the court to exercise its discretion and grant the application.

The learned counsel challenged the fact that, the applicant's main excuse for delay was the fact that, he had been prosecuting his case from

Zanzibar to Arusha while the records are clear that he has been represented by an Advocate from the trial tribunal up to now. In the circumstances, distance should not be considered as the reason for his delay from 26th June to 29th July, 2022 when he got the copy of the judgment and from 29th August, 2022 when he got the decree to 05th September, 2022 when he filed the initial application. The same does not amount to technical delays because he did not act diligently and the case of **Elly Peter Sanya** (supra) is distinguishable from the circumstances of the matter at hand. He prayed that the application be dismissed with cost.

In his brief rejoinder, the applicant's advocate insisted that, the applicant had established sufficient cause for him to be granted extension of time.

Going through rival arguments from both parties, the question for determination is whether this application for extension of time has merit. It is a trite principle that, the grant of extension of time is entirely upon the court's discretion, which however should be exercised judiciously. Moreover, the grant is not automatic, a party has to convince the court that he/she has genuine grounds and sufficient reasons for the court to exercise its discretion

to grant the extension as it was held in the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No 12 of 2012, CAT.

As rightly argued by the respondent's learned counsel, there is no definition to what a good cause must entail in extending time, it can however be due to a number of reasons such as the duration of delay-whether the delay is inordinate; whether the applicant has sufficiently accounted for the delay; whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See; **Attorney General vs. Tanzania Ports Authority & Another**, Civil Application No 87 of 2016 CAT and **Ramadhan J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported).

In the application at hand, the applicant claimed that, as soon as the trial tribunal delivered its judgment, he has been up and down trying to appeal to this court as deponed in his affidavit as well as elucidated in his submission. According to the records, the applicant was issued with a copy of the tribunal's judgment on 29th June, 2022, decree 29th August, 2022 and he filed his initial application for extension of time on 5th September, 2022.

There was a gap of seven days delay. More so, after he prayed to withdraw the application on 24th October 2022, he was issued with the Order on 1st November, 2022, made follow-ups of the proper documents, and filed this application online on 3rd November, 2022. However, the receipt shows the same was paid for on 11th November, 2023 which is presumed to be the day of official filing although the application was stamped to mark filed on 14th November, 2022. This is eight days delay from his alleged filing.

In his submission, he asserted that, he resides in Zanzibar, a fact which the respondent does not dispute but denies to be a sufficient cause for the delay as he was under-representation. Under normal circumstances, eight days for the relevant documents to be prepared by his advocate in Arusha sent to be signed in Zanzibar, and then sent back to his Advocate in Arusha for him to verify them and file them in court is a reasonable delay. In the case of **Philemon Mang'ehe t/a Bukine Traders vs. Gesso Hebron Bajuta**, Civil Application No. 8 of 2016, CAT at Arusha, the Court of Appeal observed that;

"Taking into consideration the circumstances surrounding this case and the fact that the applicant had not been sitting idle, I am of the considered view that good cause has been established. As a result, extension of time is hereby granted to


the applicant to file his application for Reference. The application should be filed within a period of seven (7) days from the date of the delivery of this ruling."

For the reasons herein stated, the way the applicant made follow-ups shows promptness, and taking into consideration that granting of extension of time is entirely the court's discretion, I find that applicant's delay was reasonable and not inordinate in the circumstances of the case at hand. That said, I find the application meritorious and deserve to be granted. The applicant is hereby granted 14 days to file his appeal. Cost to follow the events.

It is so ordered.

DATED and delivered at **ARUSHA** this 30th day of June, 2023




J.C. TIGANGA
JUDGE