

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**THE SUB - REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. LAND APPLICATION NO. 19 OF 2023**

**REHEMA OMARY-----APPLICANT**

**VERSUS**

**AZIZI AMANI-----RESPONDENT**

**RULING**

*May 23<sup>rd</sup> & June 23<sup>rd</sup>, 2023*

**Morris, J**

The applicant above, by way of an application, moves this court to extend time within which to appeal against the judgement of District Land and Housing Tribunal for Chato (DLHT) in application No. 16 of 2022. When the matter came for hearing, I ordered the application to be argued by way of written submissions. Parties complied. The applicant was represented by Advocate Hidaya Haruna while the respondent enjoyed representation by Advocate Mussa Mhingo.



Before the DLHT, parties litigated over a suit land situated at Izumangabo village, Bwanga Ward - Chato District, Geita. It was alleged that the respondent bought it in 2012 from one Nuru Masele, the applicant's husband. Further allegations were that the disposition was vide a sale agreement which was also signed by the appellant who affixed her thumb prints thereon. The applicant denied to have ever signed the said sale agreement.

She also claimed that by 2012, her husband had already left her for 4 years past. The DLHT gave judgement in favor of the respondent. Aggrieved by such decision, she intends to appeal to this court. But she is time-barred and should first obtain extension of time. The time limitation constitutes the essence of this application.

The affidavit of the applicant supporting the reveals further that, the judgement was delivered on 20/1/2023. Then, on 1/2/2023, she wrote a letter requesting for tribunal documents. She, however, alleges that she was told to wait until 20/2/2023 when they were supplied to her. Even then, she noticed that the judgement had two different dates. She, thus, wrote a letter requesting for rectification of the discovered error on



22/2/2023. It is also averred that the same was not rectified timely until a copy of the correct version of the judgement was supplied to her on 24/3/2023. She further deposes that, on 27/3/2023 the applicant went to TAWLA for legal assistance. The later prepared and filed this application on 4/4/2023.

In favor of the application, it was submitted that her delay was not inordinate and that, it was not occasioned deliberately. She placed the blame on being supplied with the requisite tribunal documents late. Order XXXIX Rule 1 (1) of ***the Civil Procedure Code*** (CPC), Cap 33 R.E 2019 was referred to substantiate her argument that the appeal was supposed to be accompanied with copies of judgement and decree. To her, since the judgement and decree had different dates, she could not appeal on time. Further reference was made to the case of ***Emmanuel R. Maria v The District Executive, Bunda District Council***, Civil Application No. 66 of 2010 (unreported).

It was further submitted that 12 days spent for preparation of necessary documents for this application by TAWLA was reasonable in line with the case of ***Vodacom Tanzania PLC vs. Commissioner General***,



**Tanzania Revenue Authority**, Civil Application No. 101/20 of 2021 (unreported).

Replying, the respondent submitted that the intended appeal will be incompetent for the reason that the original proceedings was against the applicant and one Nuru Masele who has been omitted in this application. Further, to the respondent, the power to extend time is discretionary as held in the case of ***Bakari Abdallah Masudi v Republic***, CoA Criminal Application No. 123/07 of 2018. However, that power should be exercised where there is sufficient and reasonable cause. Consequently, per the cited case, the applicant is required to state reason for delay; account for every day of delay; explain how the delay was not inordinate and not a result of lack of applicant's diligence, sloppiness or negligence; and whether there is illegality tainting justice in the whole proceedings.

It was further submitted that, the alleged letter was written ten (10) days after the judgement on 1/2/2023. Therefore, the respondent argued that the applicant failed to account for those 10 days. In addition, even after the alleged date of being given the decree, she wrote a letter on 22/02/2023 to request for rectification; but she did not state how one day



(21/02/2023) was spent. In line with the case of ***Lusagila Machia v Republic***, Criminal Application No. 26/11 of 2017 (unreported) there was no proof that she was making any follow-up at the DLHT. It is a further counter by the respondent that, the applicant alleges to had been told by registry officer that the chairman was attending session at Tarime but no affidavit of such officer was given. Also, no proof of how she spent 31 from 22/02/2023 to 24/03/2023 allegedly awaiting rectification. To the respondent, every day of the delay needs to be accounted for as per the case of ***Dar es Salaam City Council v Group Security Co. Ltd.***, Civil Application No. 234 of 2015.

In rejoinder, it was submitted by the applicant that the court should not be tied with technicalities. To her, the omission to join one Nuru Msele in this application need not render the application incompetent worth striking it out but rather amendment of this application would cure the defect without causing injustice to the opposite party.

I have dispassionately considered the submissions of both parties. An objection concerning parties in this application was raised in the course of submissions. It dictated my mind to first determine whether this



application is and intended appeal will be competent in exclusion of Nuru Masele who was party to original proceedings. In the case of ***Salim Amour Diwani v the Vice Chancellor Nelson Mandela African Institution of Science and Technology and another***, Civil Application No. 116/01 of 2021 (unreported), the Court of Appeal was required to determine an application for extension of time, but it considered the names of parties which were twisted therein. It stated at page 4 the following principle:-

*"It bears reaffirming that, parties in the proceedings should at any given time appears as they did in the previous proceedings unless there is reason for not observing that and only with leave of the court."*

Being guided by this authority, this Court is inclined to agree with the respondent that the intended appeal will be incompetent for omitting Nuru Masele. Likewise, this application is also incompetent for the same reason. The applicant's counsel prayed for amendment of application. As the prayer was made in the rejoinder submissions; and being a new aspect/prayer it cannot be granted.



I, therefore, strike this application out for being incompetent. In the interest of justice, I grant the applicant 7 days to file a competent application should she so wish. I make no order as to costs.

The right of appeal is fully explained to parties.



**C.K.K. Morris**

**Judge**

**June 23<sup>rd</sup>, 2023**