

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

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**MISC. LAND APPLICATION NO. 3 OF 2022**

*(Arising from decision of the District Land and Housing Tribunal for Babati in Land Application No. 21 of 2018)*

**JUMANNE ISSA.....APPLICANT**

**VERSUS**

**YASIN TWAHA.....RESPONDENT**

*Date of last order: 9/2/2022*

*Date of Ruling: 20/2/2023*

**RULING**

**BARTHY, J.**

The applicant lodged an application in this Court by way of chamber summons under Sections 41 (2) of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) 14 (1) of the Law of Limitation Act [CAP 89 R.E 2019], (the LLA) and Order XLIII Rule 2 of the Civil Procedure Code [CAP 33 R.E 2019] seeking for the following orders;

- i. *That this Honourable Court be pleased to extend time to file an appeal against the judgment dated 12<sup>th</sup>*

*October 2022 delivered by Hon. Chairman K. C. Ngonyani.*

- ii. *Such further and other relief(s) as the Honourable Court deems fit and just to grant.*

The application is supported by an affidavit of the applicant himself. On the other hand, the respondent lodged a counter affidavit to contest the application.

When the application was called on for hearing, Mr. Godfrey Mlingi learned counsel appeared for the applicant, while the respondent appeared in person, to fend for himself. The application was disposed of orally.

Mr. Mlingi on his submission he first prayed the contents of the applicant's affidavit be adopted to form part of his submission. He went on to submit that, in terms of Section 41(2) of the Act; an appeal to this court originating from the decision of the DLHT has to be lodged within 45 days.

The learned counsel contended further that the instant application was lodged on 29<sup>th</sup> November, 2022 and there was a delay of only 2 days. He urged the court to grant the prayers sought because there are sufficient reasons advanced by the applicant.

It was also Mr. Mlingi's submission that, the applicant having received the copy of the judgment he intended to engage an advocate but he could not afford the fees.

He contended further that there are irregularities on the decision of the DLHT, whereby the trial chairperson had received copies of documentary evidence and relied on them to arrive to the decision.

It was submitted further that, the applicant having learnt that he was out of time, he promptly filed this application which had delayed for only two days.

To buttress his point he referred to the decision of this court in the case of **Geremia Philipo v Boniface Damiano Ngao**, Misc. Land Application No, 6 of 2019 (unreported) citing with approval the case of **Sebastian Ndaula v Grace Rwamafa (Legal representative of Joshua Rwamafa**, Civil Application No. 4 of 2014 Court of Appeal of Tanzania (unreported), where it was held that it is a trite law that an application for extension of time the applicant must satisfy the court that since he became aware of the fact that he is out of time, act expeditiously and the application has been brought in good faith.

Mr. Mlingi was of the view that, in the instant application the applicant acted expeditiously.

On further submission the learned counsel contended that, in terms of Section 19(2) of the LLA the impugned judgment was delivered on 12/10/2022 and the applicant was supplied with the same on 20/10/2022 about 8 days later and since exclusion of time is not automatic, he prayed the court to exclude the period of 8 days from the time.

The respondent on his reply, he simply stated that he objected the prayer for extension of time as the applicant is out of time.

Having heard the rival submission with respect to the application, the sole issue for determination is whether the applicant has sufficient reason to be granted the extension of time to file the appeal out of time.

With respect to the application at hand, it is not in dispute that the impugned judgment of the DLHT was delivered on 12/10/2022. As rightly pointed out by Mr. Mlingi that, the applicant who is aggrieved with the said decision ought to have preferred an appeal within 45 days.

The intended appeal ought to have been lodged before this court not later than 26/11/2022. It was however prayed by Mr. Mlingi that, the court has



to exclude the period of 8 days from the date the impugned decision was delivered to the date the same was supplied to the applicant, that is on 20/10/2022.

The provision of Section 19 (2) of LLA excludes the period within which one is yet to be supplied with copies of the judgment, decree and proceedings for purposes of the appeal. As rightly submitted by Mr. Mlingi that in a given circumstances, the exclusion of time is not automatic.

In the case of **Alex Senkoro & 3 others v Eliambuka Lyimo (as administrator of the estate of Fredrick Lyimo deceased)**, Civil Appeal No. 17 of 2017 CAT (unreported) with regard to the exclusion of period envisaged by Section 19(2) of the LLA, the Court had the following to say;

*We need to stress what we stated in the above case that **the exclusion is automatic as long as there is proof on the record** of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of Section 19 (2) and (3) of **LLA these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was***

***requested*** and the date of the supply of the requested document. [Emphasis supplied].

For the applicant to benefit with the exclusion of 8 days, there must be proof on the record when the applicant had requested the copy of the judgment and when the same was supplied to him.

In the instant application the applicant averred on paragraph 3 of the affidavit in support of application that he was supplied with the copy of the decision on 20<sup>th</sup> October, 2022; but the affidavit is silent as to when he requested for the said copy.

Since there is no proof that the applicant had requested for the said copy; It follows therefore that, the period of 8 days from the date the decision was delivered, to the date the same was supplied to the applicant cannot be excluded. Therefore, the period of 45 days begun to run from the date the decision was delivered.

That being the case, the instant application was lodged in this court on 1/12/2022, with the counted delay of 6 days.

It is the settled principle that, in an application for extension of time, the applicant must show good cause for failure to file the same within the prescribed time.

The need to show sufficient cause before the court can grant a prayer for extension of time has been emphasized in numerous decisions such as; **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 (unreported) and in the case of **Sebastian Ndaula v. Grace Rwamafa**, [supra] as correctly referred to by Mr. Mlingi.

The court can only grant the extension of time to file an appeal out of time upon sufficient cause shown as provided under Section 41 (2) of the Act. However, the law is silent as to what constitutes good cause. There are various case laws that had stated that, there are number of factors to be considered to constitute good cause.

Such factors are; whether or not the application has been brought promptly; if there is a valid explanation for the delay and whether there was diligence on the part of the applicant. (See the cases of **Tanga Cement Company Limited v. Jumanne D. Masangwa & Another**, Civil Application no. 6 of 2001, **Tauka Theodory Ferdinand v. Eva Zakayo Mwita** (As

**Administratrix of the Estate of the Late Aibanus Mwita)** and **Wambura NJ. Waryuba v. The Principal Secretary, Ministry of Finance and Another**, Civil Application No. 225/01 of 2019 (all unreported).

The need to show good cause does require to account for each day of delay. This has been emphasized in numerous decisions such as **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta v. Jane Jonathan (As Legal Representative of the Late Simon Mperasoka- Deceased)**, Civil Application No. 566/01 of 2018 (both unreported).

In the former case the Court stated;

*"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"*

In the present matter the applicant has advanced his reasons for the court to exercise its discretion for extension of time; first, the applicant consulted the advocate then he went to look for a fee to hire his services.



The applicant was required to strictly account for each day of delay. Such information should have been deposed in his affidavit. In absence of such crucial explanation, the same remain mere unproven assertions. I therefore hold that this reason alone was not sufficient to account for the court consider granting the extension of time.

The second reason advanced by the applicant is that the impugned decision is tainted with irregularities as the DLHT relied on documentary evidence which were copies to make its findings.

I am much aware that presence of irregularities or illegalities on the decision complained of can be sufficient reason for extension of time irrespective of whether the applicant has accounted for each day of the delay.

However, in order to constitute illegality, the same must be apparent on the face of record not that would be discovered by long drawn arguments or process. This position has been restated in a number of cases including; **The Principal Secretary, Ministry of Defence and National Service V. Devram P. Valambhia** [1992] T.L.R 387, **Lyamuya Construction V. Board of Young Women Christians Association**, Civil Application No. 2 Of 2010 (Unreported).

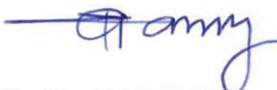
The allegation that the DLHT relied on documentary evidence which were copies is not reflected anywhere on the face of the decision sought to be challenged. Even Mr. Mlingi could not mention which are the documentary evidence that were copies and relied by the DLHT to make its decision.

It is for the foregoing reasons; I hold that the application lacks merits and it is hereby dismissed with costs.

It is so ordered.

**DATED** at ~~Babati~~ this 20<sup>th</sup> February, 2023.



  
**G. N. BARTHY**  
**JUDGE**  
**20/2/2023**

Delivered in the presence of Mr. Godfrey Mlingi the learned counsel for the applicant and the respondent in person.