

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 33 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Mbulu in
Misc. Land Application No. 15 of 2022)

DANIEL GIDABU APPLICANT

VERSUS

LANTA SEHHO..... RESPONDENT

RULING

27/6/2023 & 14/8/2023

BARTHY, J.

The applicant preferred the instant application under section 41 (2) of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) seeking for the following orders;

- 1. That the honourbale court be pleased to grant orders for extension of time to appeal to the High Court of Tanzania against the judgment and decree of the district Land and Housing dated 17/3/2022 vide land application No. 12 of 2021 and grant leave to the*

applicant to appeal out of time for the interest of justice to give the applicant right to be heard on his intended appeal.

2. The costs of this application to follow events.

3. Any other relief(s) the court may deem just to grant.

The application is supported by an affidavit sworn by the applicant himself. The respondent lodged counter affidavit to contest the application.

The court ordered the application be disposed of by way of written submissions in which the applicant was required to lodge his submission in chief on or before 11/7/2023 and reply submission by the respondent was required to be lodged on or before 27/7/2023.

It is on record that while the submission in chief by the applicant was lodged within time, the respondent's reply submission was lodged on 3/8/2023 contrary to the order of this court and without seeking an extension of time.

It is now the settled principle that failure to file written submission according to the order of the court, it is as good as the having failed to

appear and prosecute or defend the case.

This has been re-stated in a number of times by this court, just to mention the case of **Abisai Damson Kidumba v. Anna N. Chamungu and 3 Others**, Miscellaneous Land Application No. 43 of 2020 District Registry of Mbeya at Mbeya (unreported).

Hence the respondent's reply submission will be disregarded in determination of this application.

The applicant in his submission he had argued that, he instituted land application No. 12 of 2021 against the respondent before the District Land and Housing Tribunal for Mbulu (the trial tribunal) claiming ownership of land measuring about 1.1/2 situated at Ayapara Mashariki at Sanubaray Ward in Mbulu District.

The applicant further argued that, the said application was dismissed by trial tribunal for non-appearance. Hence, he lodged Misc. Land Application No. 15 of 2022 to set aside the dismissal order, which was also dismissed by the trial tribunal.

The applicant submitted further that immediately after his application was dismissed, he lodged another application before this

court vide Misc. Land Application No. 93 of 2022 to challenge the decision of the trial tribunal on Misc. Application no. 15 of 2022. Nonetheless, his application was found to be incompetent and it was dismissed. The applicant was advised to follow right channel before this court.

The applicant argued that, the delay in filing the appeal within time was not done intentionally, rather it was out of his control and the court may consider it as a sufficient cause. To bolster his argument, he cited the decision in the case of **Tanga Cement Company v. Jumanne D. Masangwe and another**, Civil Application No. 6 of 2001, Court of Appeal of Tanzania (unreported) which held that;

"...it is settled that where extension of time is sought, the applicant will be granted upon demonstrating sufficient cause for delay..."

The applicant maintained he had advanced sufficient reason for the extension of time. He also pointed out that, there is also an irregularity on the decision sought to be challenged due to violation of right to be heard.

Having gone through the applicant's submission in support of the application at hand, the sole issue for my determination is whether the applicant has advanced good cause for extension of time.

In terms of section 41(1) of the Act, any person aggrieved by the decision of the District Land and Housing Tribunal in the exercise of its original jurisdiction, is required to lodge an appeal to this court within 45 days.

Should one fail to lodge the appeal within the prescribed period, he is required to seek an extension of time to this court as provided in the proviso to section 41(2) of the Act, which reads;

*Provided that, the High Court may, **for the good cause**, extend the time for filing an appeal either before or after the expiration of such period of forty five days. [emphasis added]*

From the above provision of the law, in order for the applicant to succeed in his application for extension of time, he is required to advance good cause. However, the said provision above does not define what amounts to good cause.

Gathering from the case of **Nada Panga v. Asha Seif & Another** Civil Application No. 312/12 of 2020, Court of Appeal at Tanga (unreported), while referring to the case of **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd.** Civil Application No. 13 of 2010 (unreported) held that;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause' is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion".

It follows therefore that, what constitutes good cause depends on the circumstance of each case. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported) the Court of Appeal expounded several factors to be taken into account in deciding whether the applicant has advanced good;

"(a) The applicant must account for all the period for delay;

(b) The delay should not be Inordinate;

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and

(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged".

The applicant stated he lodged Land Application No. 12 of 2021, which was dismissed for non-appearance on 17/2/2022. After the dismissal of his application, he lodged Misc. Land Application No. 15 of 2022 to set aside the dismissal order in respect of Application No. 12 of 2021 but in vain.

In terms of Regulation 11(2) of the Land Disputes Courts (the district land and housing tribunal) Regulations G.N. No. 174 of 2003 (hereinafter referred as the Regulations) the applicant was required to lodge an appeal to this court following the decision of the trial tribunal.

The applicant instead of lodging an appeal, he lodged Misc. Land Application No. 93 of 2022 before the High Court at Arusha seeking an

order to set aside the dismissal order in respect of Misc. Land Application 15 of 2022.

Looking in totality of the matter at hand, the decision which the applicant seeks to challenge was delivered on 17/6/2022. Hence, there is a period of about nine months which the applicant spent in prosecuting Misc. Land Application No. 93 of 2022.

The applicant being a lay person and unrepresented at all levels, I am of the settled view that, with due diligence and with good faith the applicant presented and prosecuted his application in wrong forum.

The applicant is entitled to an exclusion of the period of time in prosecuting Misc. Land Application No. 93 of 2022 in terms of Section 21(2) of the Law of Limitation Act [CAP 89 RE 2019].

I have also taken into account that, Misc. Land Application No. 93 of 2022 which was lodged at the High Court Arusha registry was lodged on 15/7/2022 which was well within 45 days, which is a period prescribed for lodging appeals to this court against the decision of the District Land and Housing Tribunal in the exercise of their original jurisdiction.

This position was taken by the court of Appeal in the case of **Geita Gold Mining Limited v. Anthony Karangwa**, Civil Appeal No. 42 of 2020 Court of Appeal of Tanzania at Mwanza (unreported).

Consequently, the reasons offered by the applicant are sufficient good cause for this court to use its discretion to grant the extension of time. Thus, I find the application to be meritorious. The applicant is granted an extension of 21 days to lodge his appeal. Costs of this application to be in the cause.

It is so ordered.

Dated at Babati this 14th August 2023.



A handwritten signature in blue ink, appearing to read 'G. N. Barthy', written over a horizontal line.

**G. N. BARTHY,
JUDGE**

Delivered in the presence of the applicant and respondent in person and her interpreter Nehima Hau.