

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY]**

AT ARUSHA

MISC. LAND APPLICATION NO. 21 OF 2023

*(C/F Land Application No. 101 of 2017 before District Land Housing Tribunal for
Karatu)*

BETWEEN

CULTURAL HERITAGE COMPANY LIMITED _____ APPLICANT

VERSUS

SILO LANTA _____ RESPONDENT

08/2023 & 21/08/2023

RULING

BADE, J.

This is an application for the grant of an order for an extension of time within which the Applicant can file her Memorandum of Appeal against the Judgment and Decree issued by the District Land and Housing Tribunal for Karatu at Karatu on the 7th day of December 2022. The Application is made under the provision of Section 41 (2) of the Land Disputes Act, [CAP 216 R.E 2019] through Chamber Summons supported by the affidavit of the applicant's representative.

The parties had sought and were granted leave to file written submissions, with the Applicant being represented by Counsel Felichismi Baraka, while the Respondent enjoyed the services of Advocate Patrick Maligana. Both sides abided by the filing schedule as ordered.

The deposed affidavit of one Ally Mkindi has canvassed various facts in support of the application explaining the reason for seeking an extension of time.

To give context to the application, I revisited the facts of the case albeit briefly. The dispute between the Applicant and the Respondent emanated from the ownership of two acres of land out of 551 Acres owned by the Applicant at Kilimani Sub Village, Ganako Ward, Karatu District under Certificate of Title with Title No. N.P. 172. The affidavit also states that on 7/12/2022 the Chairman of the Karatu DLHT delivered Judgment in Land Application No. 101/2017 to the effect that the Applicant had failed to establish her claim which means the Respondent won, and thus the dissatisfaction to want to appeal.

Paragraphs 4 to 8 of the affidavit account for the time that has elapsed from the time the Judgment was delivered to the present time when the application is filed before this court, insisting that immediately after the pronouncement of judgment, the Applicant requested to be supplied with copies of Judgment, Decree, and Proceeding but the same was not issued on time until the expiry of time to file the appeal.

Having explained the delay and establishing that it was neither inordinate nor negligent, the Applicant proceeded to establish that there are some legal concerns with the Judgment and proceedings and Decree in Land Application No. 101 of 2017 being marred with different irregularities as canvassed in Paragraph 9 to 13.

The Respondent on the other hand evasively denied all the allegations. I must state from the outset that the kind of counter-affidavit filed by the Respondent is not helping the court reach a just determination of a matter before the court. In fact, this court has pronounced quite a while **East African Cables (T) Ltd vs Spencon Services Ltd**, Misc Commercial Application No 61 of 2016 (Unreported) that in law, an affidavit and/or counter-affidavit (as the case may be) is evidence. It is a voluntary declaration of the facts written down and sworn by the declarant before an officer authorized to administer oaths. Unlike pleadings (such as plaint and written statement of defence and other pleadings), affidavits and counter-affidavits are prima facie evidence of the facts stated therein. So when a fact is stated on oath, it has to be controverted on oath, and that gives the court an opportunity to weigh which fact is probably true than the other. When the fact sworn or affirmed is not controverted then it is deemed to be admitted. His

lordship Mruma, J. further expounds that when a person swears or makes a sworn declaration of a fact the best way to challenge him/her is to swear a fact which tends to show that what he has sworn to was untrue. Putting to him to strict proof of the fact without giving the other side of the story which over which an opposing litigant wants to be believed amounts to an admission of the fact. A requirement of strict proof of the facts applies to pleadings in the suit (i.e plaint, written statement of defence etc.) and not for affidavits and counter-affidavit which are evidence.

Having said so, I now turn to determine the application under Section 14 (1) of the Law of Limitation Act, [CAP 89 R.E. 2019], the issue being whether the applicant has shown good cause for an extension of time.

In the case of **Lyamuya Construction Co. Ltd and Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) there have been established guidelines to be followed before granting an extension of time, thus:

- (a) The applicant must account for all the period of 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.

(d) If the court feels that there are other sufficient important reasons, such as the illegality of the decision sought to be challenged.

Similarly, in the case of **Laurent Simon Assenga vs. Joseph Magoso & 2 others**, Civil Application No. 50 of 2016 the Court of Appeal expounded further in answer to the question of a good cause for the delay depending on the fact of each case, insisting that many and varied circumstances could constitute good cause in any particular case.

The Applicants submitted on the range of irregularities and accounted for the delay up to the time they have filed the extension of time. This in my view satisfies the sufficiency test as enunciated on the **Lyamuya's case** (supra).

The Respondent meanwhile is of the view that the grant of extension of time is the discretion of the court, but the court has to satisfy the cause sufficiency test and considered the chances of success of the appeal to apply its unfettered discretion. All the cited authorities I think are guiding on the same issue including the **Elius Mwakalinga vs Domina Kagaruki And 5 Others**, Civil Application No. 120/12 of 2018

(Unreported) where the applicant has to demonstrate the length of the delay, reasons for the delay, whether there is an arguable case as on a point of law on the illegality of the decision sought to be challenged.

I am satisfied that the applicant has demonstrated sufficient good cause for an extension of time to grant. The application is accordingly allowed. The Memorandum of Appeal has to be lodged within 30 days from the date of this ruling. No order as to costs.

It is so ordered.

DATED at ARUSHA on the 21st of August 2023.



**A.Z. BADE
JUDGE
21/08/2023**

Ruling Delivered in chambers on **21st of August, 2023** before parties / their representatives.



A handwritten signature in blue ink, appearing to read "A.Z. Bade", is positioned above a horizontal line.

A.Z. BADE
JUDGE
21/08/2023