

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 17 OF 2023**

(Originated from Application No. 16 of 2020 at the DLHT for Arusha at Arusha)

**ELIREHEMA ELIBARIKI MBISE.....APPLICANT**

**VERSUS**

**ZABLON ELIBARIKI MBISE.....1<sup>ST</sup> RESPONDENT**

**AIRTEL TANZANIA LIMITED.....2<sup>ND</sup> RESPONDENT**

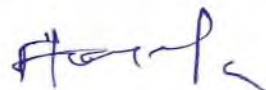
Date of last order: 24/07/2023

Date of Ruling: 28/08/2023

**RULING**

**MWASEBA, J.**

Aggrieved by the decision of the District Land and Housing Tribunal for Arusha at Arusha via Application No. 16 of 2020 (trial tribunal) the applicant is seeking for extension of time to file an appeal out of the prescribed time. The application was brought under **Section 41 (1) and (2) of the Land Disputes Courts Act**, Cap 216 R.E 2019. It is supported by an affidavit sworn by the applicant and opposed by counter affidavits for the 1<sup>st</sup> respondent and Mr. Robert Mgoha George, learned counsel for the 2<sup>nd</sup> respondent.



When the application was called for hearing which was done orally, Mr. Macmillan Makawia, learned Counsel represented the applicant whilst Mrs. Kimale and Mr. Robert Mgoha, both learned counsels represented the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively.

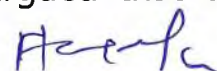
Supporting the application, Mr. Makawia adopted their affidavit to form part of his submission. He argued that the applicant herein was an applicant at DLHT where a preliminary objection was raised by the 2<sup>nd</sup> respondent and it was sustained and the application was dismissed for being time barred. He stated further that a ruling of DLHT was delivered on 22/7/2021 and he was supplied with the certified copy of the ruling on 26/11/2021 after many follow ups and after paying government money via receipt No. A21330081186172. Thereafter, the applicant filed a Misc. land Application before this court where he noted that a case number in the ruling of the Tribunal was wrongly quoted as Misc. Civil Application No. 16 of 2016 instead of Misc. Civil Application No. 16 of 2020. Thus, the error of failing to file an application within time was caused by the tribunal as explained herein. He supported his arguments with the case of **Valerie McGivern v. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 (CAT at Tanga, reported at Tanzlii).



He prayed for the application to be allowed so that the applicant can be heard on the intended appeal.

Opposing the application, Mrs. Kimale for the 1<sup>st</sup> respondent submitted that, the applicant failed to give sufficient reasons to move the court to grant the application. She submitted further that; no proof was given by the applicant to show that he was making follow ups to be supplied with a copy of the ruling as alleged. Further to that, the applicant once filed an application for an extension of time via Misc. Land Application No. 104 of 2021 which was struck out by Hon. Gwae, J due to the fact that the ruling of the Tribunal had defect for bearing a different number with it's case and he was advised to make corrections. However, there is no proof that the applicant made any efforts in order to be supplied with the corrected copy since 25/08/2022 up to 14/2/2023 when this application was filed. She submitted further that the applicant failed to account for each day of delay thus the application needs to be dismissed. Her arguments were supported with the case of **Lydia Abraham Ngowo v. Asha Ngowo @ Asha Abraham and 3 Others**, Civil Application No. 294/02 of 2019.

On his side, Mr. Mgoha for the 2<sup>nd</sup> respondent adopted their counter affidavit to form part of his submission. He argued that the affidavit



supporting the application did not adduce sufficient reasons for the court to grant the application. He distinguished the cited case of **Valerie Mcgivern** (supra) for being inapplicable in our application. It was his further argument that no proof was submitted to prove that he made follows ups at DLHT to be given a corrected ruling and no copy of the cited receipt was annexed to prove his allegation. His arguments were supported with the case of **Elius Mwakalinga v. Domina Kagaruki and Others**, Civil Application No. 120/17 of 2018. In the end, he prayed for the application to be dismissed with costs.

In his brief rejoinder, Mr. Makawia reiterated what had already been submitted in his submission in chief and added that as he requested for the copies orally there is no need to attach any documents. He added that this application was filed after six months from when the orders was given by Hon. Gwae, J, and he collected the copy of the corrected ruling five months later. He maintained his prayer for the application to be granted so that the matter can be determined on merit.

Having heard the rival submissions from both sides, the issue for determination is whether the applicant advanced any sufficient cause for the court to grant the payer sought.



It is a trite law when a time to lodge an appeal has lapsed a party can file an application for extension of time to file an appeal out of the prescribed time upon adducing sufficient reasons. This is well provided under **Section 41 (1) and (2) of the Land Disputes Courts Act**, that:

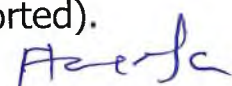
*"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:*

*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."*

The same was expounded in the case of **Finca (T) Limited and Another v. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (CAT at Iringa, Unreported) held that:

*"It is settled that where extension of time is sought, the applicant will be granted, upon demonstrating sufficient cause for the delay. Conversely, it is also well settled that the sufficient cause sought depends on deliberation of various factors, some of which revolve around the nature of actions taken by the applicant immediately before or after becoming aware that the delay is imminent or might occur."*

See also the case of **Karibu Textile Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 (CAT-unreported).

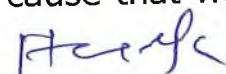


In our present application, the applicant adduced only one reason for being late to file his appeal out of the prescribed time which is the delay of DLHT to supply him with a corrected copy of the ruling. However, as submitted by the counsels for the respondents, no proof was attached to prove that he was making any follow ups regarding the certified copies of the corrected ruling.

More to that, the applicant failed to account for each day of delay. The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in a numerous decision, including the case of **Bruno Wenceslaus Nyalifa v. The Permanent Secretary, Ministry of Home Affairs and Another**, Civil Appeal No. 82 of 2017 (CAT at Arusha, Unreported).

Looking at the reasons advanced by the applicant, I join hands with the learned counsels for the respondents that he did not show good cause and account for the delay to the standard required. The assertion that, he was waiting to be supplied with a corrected copy of the ruling from DLHT, is not enough without any proof to move the court to grant extension sought.

In the event, I must conclude that, under the circumstances pertaining to this case, the applicant has failed to illustrate good cause that would

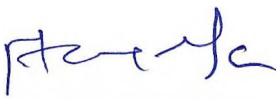


entitle him extension of time as sought. This application is consequently dismissed with costs for want of merit.

Order Accordingly.

**DATED** at **ARUSHA** this 28<sup>th</sup> day of August, 2023.



  
**N.R. MWASEBA**  
**JUDGE**