

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 42 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Babati in
Land Application No. 3 of 2018)

BAKARI JUMAAPPLICANT

VERSUS

MWINDA RAMADHANI.....RESPONDENT

RULING

21/8/2023 & 11/9/2023

BARTHY, J.

Being aggrieved with the decision of the District Land and Housing Tribunal for Babati (the trial tribunal), the applicant intended to challenge the same by way of an appeal, but unable to do so timely.

He therefore preferred the instant application under section 41(1)(2) of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act), seeking for the following orders;

- 1. That this honourable court be pleased to grant leave to extend Applicant's time to file the petition of appeal out of time in relation to Babati District Land and Housing tribunal Application No. 3 of 2018.*



2. That costs in this application follow event.

The application is supported by an affidavit sworn by Tumaini Isara Iteremi learned advocate for the applicant. The respondent lodged counter affidavit to contest the application.

When the application was called on for hearing Mr. Tumaini Iteremi learned advocate appeared for the applicant while Mr. Godwin Ayo learned advocate appeared for the respondent. The application was disposed of orally.

Mr. Iteremi adopted the affidavit in support of the application to form part of his submission, he also argued that the applicant was offered legal aid services with Legal and Human Right Centre (LHRC) and he lodged the same at the high court Arusha registry. However, he was informed he is required to file it before high court Manyara registry.

It was further submitted that, the appellant intended to lodge his appeal, but time lapsed. Then the applicant started to look for advocate to represent him. He further deposed that, if the applicant had proper legal guidance, he would have lodged his appeal within time.

It was the submission of Mr. Iteremi that, the court should consider granting the application, since applicant was denied his right to call his



necessary witnesses including the survey officer and neighbors on the suit land.

He also claimed the applicant was denied his right to tender documentary evidence to prove ownership of the suit land. He added that, the applicant was even denied copies of proceedings which were not supplied to him to-date.

Mr. Iteremi insisted that, the trial tribunal did not evaluate the evidence on record, thus there is an overwhelming chance of appeal to succeed if the applicant will be granted an extension of time.

On reply submission Mr. Ayo contended that, there is no proof the applicant was denied copies of proceedings. He went on stating that a party can file his appeal after being supplied with the copy of the decision and decree.

Mr. Ayo further contended that there was no proof that the petition of appeal was prepared through legal aid, since the same has not been attached in the application.

Regarding the claim that the appeal has an overwhelming chance of success, it was countered by Mr. Ayo that, it is was not a factor to be considered by the court in granting an application for extension.

On rejoinder submission Mr. Iteremi reiterated his arguments he



made in his submission in chief.

Having gone through the parties' rival submissions as well as the opposing affidavit in relation to this application, the sole issue for my determination is whether the applicant has advanced sufficient reasons for the court to exercise its discretion for the extension of time.

It is on record that the respondent had sued the applicant before the trial tribunal for trespass on his land situated at Ngarenaro Bagara Ward, Babati. After hearing the parties, the trial tribunal decided in favour of the respondent.

According to the records available, the decision of the trial tribunal was delivered on 19/9/2022. Hence since the applicant was required to lodge his appeal to this court within 45 days in terms of section 41(2) of the Act. That means the appeal ought to have been lodged on or before 3/11/2022.

This court has discretion to extend the period for filing an appeal in terms of proviso to sub section 2 of section 41 of the Act, upon good cause is shown. The said provision provides that;



(2) 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. [Emphasis added]*

It follows therefore that, for this court to exercise its discretion for extension of time, the applicant must advance good cause. Nevertheless, the provision of the law quoted above does not state what amounts to good cause.

The court has made an attempt through case laws to define what constitutes good cause. In the case of **Oswald Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010 (unreported) the Court of Appeal stated 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"



Thus, what constitutes good cause depends on the circumstance of each case. However, in order to determine whether the applicant has advanced good cause certain factors should be taken into consideration. The court had stated in the case of **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil Reference No. 8 of 2016, Court of Appeal at Dar es salaam (unreported), the Court of Appeal while referring to the case of **Bertha Bwire v. Alex Maganga**, Civil Reference No. 7 of 2016 mentioned the factors for consideration to be that;

(a) reasons for the delay,

(b) The length of the delay,

(c) Whether the applicant was diligent and the degree of prejudice to the respondent if time is extended.

Other factors mentioned are such that, whether the applicant has accounted for each day of delay and whether there is any point of law of sufficient importance. See the decision in **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported).

Guided by the above factors, I have keenly gone through the affidavit in support of the application, where it was deposed that after the



delivery of the impugned decision by the trial tribunal, through legal aid he was required to lodge his appeal.

It was further deposed that, the applicant then timely filed his appeal on 27/10/2022 at High Court Arusha registry, but he was informed that hearing of his appeal could not proceed at Arusha. As he was supposed to be lodge it at the newly established High Court registry of Manyara. The applicant attached the said copy of the petition to support his assertion.

As correctly argued by Mr. Ayo there is no proof that the applicant indeed had filed his appeal before the high court Arusha registry. As the document attached has no seal of the said court or any other proof for that matter. However, the high court of Manyara registry had started its operation effectively on 15/11/2022.

Even if I were to agree with the applicant that he had to refile his appeal before this court, there are other hurdle which he ought to overcome. The applicant is required to have the conditions stated above to establish he had good cause for this court to grant the application.

In his affidavit in support of the application the applicant maintained that after he was left astray with the legal aid service, he had to look for



an advocate to assist him to prepare his appeal. He claimed to have engaged his advocate on 7/2/2023 to assist him lodge his appeal.

Surprisingly thought, this application was filed before this court on 7/6/2023, thus counting from the date the applicant had engaged an advocate to the date the instant application was filed, it is about four (4) months period had lapsed.

The affidavit in support of the application is silent as to what transpired from 27/10/2022 when the applicant was informed that he ought to have refiled his appeal before this court, up to 7/2/2023 when he engaged the advocate to the period dated 7/6/2023 when this application was filed in this court.

The applicant was required to account for each day of the delay. It is now the settled principle that, in application for extension of time the applicant is required to account for each day of the delay.

This requirement has been restated in a number of cases. To mention just few is the case of **Elifazi Nyatega & 3 Others v. Caspian Mining Ltd**, Civil Application No. 44/08 of 2017, **Moses Mchunguzi v. Tanzania Cigarette Co. Ltd**, Civil Application No. 531/4 of 2016, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of



2007, (all unreported). In the latter case the Court of Appeal emphasized that;

"...Delay of even a single day, hs to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken." [Emphasis added].

In the instant matter, as I have stated before the applicant has not discharged the burden of accounting each day of the delay. He had also not acted with diligent in pursuing his appeal within time, which is clear that he was negligent in taking action with respect to his case.

I have also taken into account the claims by the applicant that, he has not been supplied with copies of proceedings despite several requests by the applicant. Rightly as pointed out by Mr. Ayo there is no proof by the applicant that he had requested for the proceedings of the trial court. The applicant has not attached even a single letter showing that he had requested for the copy of proceedings.

Consequently, I find that the applicant has not been able to advance good cause for the court to grant an extension of time. The application lacks merits and it is accordingly dismissed with costs.

It is so ordered.



Dated at Babati this 11th September 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 the respondent in person;
Mr. Godrisen Ayo the counsel for the respondent and the absence of the
applicant's counsel.