

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF TABORA  
AT TABORA**

**MISC. LAND APPLICATION NO 6 OF 2023**

(Arising from Land Application No. 36 of 2019 of the District Land and Housing  
Tribunal for Tabora)

**VIC CHAMI INVESTMENT .....APPLICANT**

**VERSUS**

**CRDB BANK PLC..... RESPONDENT**

**RULING**

*Date of Last Order: 29/08/2023*

*Date of Delivery: 14/09/2023*

**MATUMA, J.**

The applicant herein **VIC CHAMI INVESTMENT** borrowed Tshs. 50,000,000/= from the Respondent and mortgaged the house located at plot no. 148 Block "RR" at Ng'ambo Tabora Municipality. It appears that the parties herein developed some misunderstandings relating to the loan in which the respondent alleged that the Applicant defaulted the repayment schedule within the agreed period. The Respondent thus issued a demand note with intent to sale the mortgaged property herein above named. It is upon such circumstances the Applicant instituted the suit in the trial tribunal seeking the Respondent to be restrained from selling such house.

The trial tribunal having heard the parties dismissed the suit and ordered the Applicant to pay the outstanding loan within sixty (60) days from the date of the order or on any other terms to be agreed by the parties themselves. In the absence of any further agreement and after expiry of the 60 days the respondent was allowed to proceed with the intended sale.

The applicant was not satisfied with the said decision but could not appeal on time hence this application for this Court to extend time within which she can file an appeal against the said decision of the District Land and Housing Tribunal for Tabora in Land Application No. 36 of 2019.

The application is made under S.41(2) of the Land Disputes Courts Act No. 2 of 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No 2 of 2016 and is supported by an affidavit sworn by Victor Chami the proprietor of the applicant.

At the hearing of this application, Victor Chami the proprietor of the applicant appeared on behalf of the applicant while the Respondent was represented by Mr. Akram Magoti learned advocate.

In his submissions, Mr. Victor Chami raised three grounds upon which the court should consider to be good cause for the sought extension;

- i. That he was sick and still he is sick to date and tried to demonstrate his leg arguing that he got an accident.
- ii. That he has already paid the respondent over and above what the respondent deserves because he borrowed Tshs. 50,000,000/= but has already paid more than Tshs. 62,000,000/= but still the Respondent demands from him Tshs. 10,000,000/=

- iii. That he delayed to get the copy of the judgment of the trial tribunal and when he got it on the 10<sup>th</sup> February, 2023 he had to talk with the bank before taking any further action but when they disagreed it is when he decided to file this application.

On the other hand, Mr. Akram Magoti learned advocate for the respondent opposed this application. He made a length submission to the effect that the grounds for the delay by the applicant are not supported by any evidence because there is no medical evidence to authenticate that indeed the Applicant was sick.

The learned advocate also argued that the issue of payment over and above as raised by the applicant is a fact that can only be determined on appeal. The learned advocate further submitted the two grounds supra contradicts what the Applicant himself stated in his affidavit because he did not depose that he was sick nor that he has paid the outstanding loan over and above.

The learned advocate also doubted the date when the applicant received the copy of judgment from the trial tribunal because the applicant did not give evidence on whether he applied for the impugned judgment and if so when he was actually supplied with the same.

Mr. Akram Magoti learned advocate being aware of the provisions of section 19 of the Law of Limitation Act, Cap 89 R.E 2019 submitted that the days spent by waiting the proceedings and judgment are excluded at the computation of time for the purposes of time limitation. In that regard the learned advocate argued that even if we agree that the applicant was supplied with the copy of judgment on 10<sup>th</sup> February, 2023, he ought to have immediately made the instant application but he spent ten more days which have not been accounted for. To fortify his arguments, he



cited the case of ***The Registered Trustees of Roman Catholic Diocese of Kigoma vs Jackson S. Rumenyera and 17 others, Misc. Land Application No. 8 of 2022*** in which this Court ruled out that even a single day of the delay has to be accounted for.

Having heard the rival submissions by both parties I first and foremost agree with Mr. Akram Magoti learned advocate with the authority he has cited that for the time to be extended, the applicant is always shouldered to establish good cause and account for each day of the delay. Illegality has at times been accepted as well as a ground for extension of time. What constitutes a good cause is a question of fact depending on the facts of each case. For that reason, many and varied circumstances could constitute good cause in any particular case. The issue is therefore; whether the applicant has shown good cause for extension of time.

In the first instance I agree with Mr. Akram Magoti learned advocate that the Applicant did not depose in his affidavit that he was sick and therefore the raised sickness cannot be but an afterthought. In respect of the issue of whether the applicant has already paid over and above though not expressly stated in the applicant's affidavit it features in the annexed judgment of the trial tribunal in one way or another when at page 2 of the said judgment the trial tribunal held that the applicant had an outstanding debt of Tshs. 28,177,284.67 but at page 3 of the same judgment during the assessor's opinion it is reflected that the debt is Tshs. 35,600,000/=. The impugned judgment is not self-explanatory to the variances which signifies that what ought to have been paid by the applicant to the respondent and what was actually paid is a contentious matter.

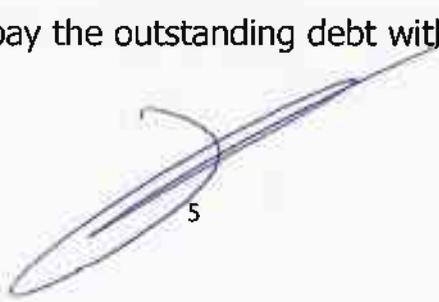
In that respect, the interests of justice demands that the extension of time be given so that the applicant appeals to avail this court an opportunity to scrutiny the records of the trial court for the better end of justice.

Not only that but also the Applicant deposed in his affidavit that he was delayed to be supplied with the copy of the impugned judgment until on the 10<sup>th</sup> February, 2023 and when he got it, he had to talk with the Respondent before coming to this court. Mr. Akram Magoti through his counter affidavit merely averred that the Applicant had no evidence to substantiate such depositions.

I am of the view that the depositions of the Applicant in his affidavit is self-evidence as to when exactly the Applicant received the copy of the impugned judgment. To the contrary, the respondent could have filed the affidavit of the relevant officer from the trial tribunal stating when exactly the impugned judgment was supplied. In the absence of such affidavit a mere denial by the respondent that the applicant did not get the said judgment on the 10<sup>th</sup> February, 2023 cannot stand.

Mr. Akram further contended that even if we take it that the applicant really was supplied with such impugned judgment on the 10<sup>th</sup> February, 2023, still he delayed to file the instant application for ten days which have not been accounted for.

With due respect to the learned advocate, the affidavit of the applicant when read together with its annexure the impugned judgment it clearly indicates that the trial tribunal ordered both in the judgment and in the decree that the parties should enter in any other agreement failure of which the Applicant pay the outstanding debt within sixty days or else



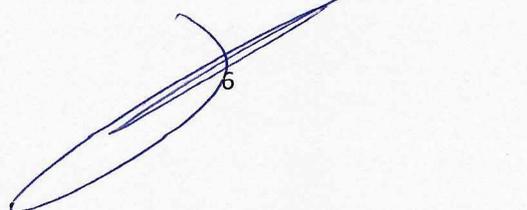
5

the respondent to sale the mortgaged house. That is seen at page 4 of the impugned judgment which reads;

*"Mahakama inaelekeza kuwa Muombaji alipe deni analodaiwa na Benki kwa mujibu wa mkataba wao ndani ya siku sitini (60) toka tarehe ya hukumu hii, na iwapo deni hilo halitalipwa ndani ya siku sitini (60) au kutokuwa na makubaliano yoyote baina ya wadaawa basi Mjibu Maombi (CRDB Bank PLC) anayo haki ya kukamata na kufanya mnada wa hadhara dhamana ya mkopo ambao ni nyumba iliyopo kwenye kiwanja Na. 148 Kitalu RR Ng'ambo Tabora Manispaa"*

The quotation herein above proves the submission of the applicant that after receiving the copy of the impugned judgment he had to go and talk with the respondent because the trial tribunal opened that door before any execution is carried on. The Applicant submitted that after he received the said judgment, he went to the Respondent as directed by the trial Tribunal to try settling the matter. That the Respondent demanded him to pay **Tshs. 10,000,000/=** which he refused as he had already paid more than **Tshs. 62,000,000/=** while the principal loan was only **Tshs. 50,000,000/=**.

From the above quotation from the impugned judgment and the submissions of the applicant, I have no reason to disbelieve that the applicant really was in communication with the respondent to try settling the matter as decided by the trial tribunal and when their talk became fruitless it is when he opted an appeal but he was already at that time out of time hence this application. There is no counter affidavit from the respondent's officer to the effect that even in the clear order of the trial tribunal for the parties to talk, the parties did not attempt to talk anyhow.



6

The available counter affidavit is that of Mr. Akram Magoti an advocate who not only that he is not an officer in the respondent's office but also did not depose any fact suggesting that there was no talk between the parties either immediate after the delivery of the impugned judgment or after the supply of such judgment to the parties.

I therefor find that the ten days delay as from 10<sup>th</sup> February, 2023 when the impugned judgment was supplied to the applicant to 21<sup>st</sup> February, 2023 when this application was filed are sufficiently accounted for. It was the period the applicant spent to try settling the matter with the respondent by directives of the trial tribunal.

For that reason, I am satisfied that the applicant has demonstrated good cause for the delay and he thus deserve extension of time. The application is therefore granted and the applicant is extended thirty (30) days from the date of this ruling to lodge his appeal. No orders as to costs. It is so ordered.



**MATUMA  
JUDGE  
14/09/2023**

**COURT;** Ruling delivered in the presence of Mr. Victor Fredrick Chami for the Applicant and in the presence of Mr. Akram Magoti learned advocate for the Respondent.



**MATUMA  
JUDGE  
14/09/2023**