

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 22 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Babati in
Misc. Land Application No. 7 of 2022)

ESTA BENGHAAPPLICANT

VERSUS

AGNES BASO.....RESPONDENT

RULING

28/8/2023 & 20/9/2023

BARTHY, J.

The applicant herein had pursued several matters before the District Land and Housing Tribunal for Babati (hereinafter referred as the DLHT) which all proved futile. Aggrieved with the decision of the DLHT, she resorted to appeal against the decision of the DLHT, but she was unable to do so timely.

Thus, 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, this honourable court may be pleased to grant an order of an extension of time to file appeal in Misc. Application No. 07 of 2022 dated 18th August 2023 (sic) out of time.*
- 2. Costs of this application be borne by the respondent;*
- 3. Any other relief this honourable court may deem necessary to serve the interest of justice.*

The application is supported by an affidavit sworn by the applicant herself. The respondent filed counter affidavit to contest the application.

By parties' consensus the application was disposed of by written submissions. The applicant was represented by Mr. Erick Mbeya learned advocate, while the respondent was represented by Mr. Pascal Peter learned advocate.

In the affidavit in support of the application, the applicant deposed that, she instituted Land Application No. 4 of 2018 before Getanuwas ward tribunal (hereinafter referred as the trial tribunal) against the respondent's father one Basso Mesai/Basso Mesay for vacant possession of disputed land measuring about seven acres.

It was further deposed that for unknown reasons the trial tribunal substituted the name of the respondent's father to that of the respondent

and after hearing the parties, it decided in favour of the respondent.

The applicant was not pleased with the decision of the trial tribunal; she lodged land appeal No. 113 of 2018 before the DLHT to challenge the decision of the trial tribunal, but the said appeal was struck out. Then the applicant filed Misc. Land Application No. 7 of 2022 seeking for an extension of time to appeal against the decision of the trial tribunal, the same was dismissed for want of merits.

After the dismissal of the Misc. Land Application No. 7 of 2022, the applicant lodged Land Application No. 141 of 2022 before the High Court Arusha registry, but the said application was withdrawn on 4/4/2023. Hence, this application.

Mr. Mbeya on his written submission in support of the application he adopted the applicants' affidavit and he urged the court to grant the prayers sought in the instant application stating the applicant has advanced sufficient reasons.

It was the argument of Mr. Mbeya that in this matter there was just a technical delay on the part of the applicant which necessitate this court to consider grant the extension of times. To support his argument on



technical delay he cited the case of **Martha Daniel v. Peter Thomas Nko** [1992] TLR 359.

The similar stance was reiterated in the case of **Ramadhani Nyoni v. M/s Haule & Company Advocates** [1996] TLR 71. Reference was also made to the case of **Denis T. Mkasa v. Farida Hamza & another**, Civil Application No. 407 of 2020, Court of Appeal of Tanzania at Mtwara (unreported) in which the Court of Appeal held that;

The law is settled that, technical delay constitutes sufficient cause for extension of time, if it is pleaded in the supporting affidavit and sufficient demonstrated by the applicant.

On further submission Mr. Mbeya submitted that, there are serious illegalities in the decision of the trial tribunal; as the number of female members did not meet the requirement of law.

It was further submitted that, there was only one female member namely Felista Sira. To reinforcement his arguments Mr. Mbeya referred to several decisions such as **Edward Kubingwa v. Matrida A. Pima** Civil Appeal No. 107 of 2018 Court of Appeal of Tanzania at Tabora (unreported).



He also submitted that, another illegality on the decision of the trial ward tribunal is on the value of the suit land which was not pleaded. He referred to the cases of the Registered Trustees of Kanisa la Mungu la Tanzania v. Musa Akonaay and & 3 others, Meneja Kiwanda Cha Saruji Wazo v. Hermelinda Joseph Bikongoro where this court was of the settled view that, failure to state the value of the subject matter in dispute is fatal.

Mr. Mbeya maintained that, illegality in the decision of DLHT on land application No. 7 of 2022 is due to the fact that the said application was filed after lapse of four years. As it was filed after land appeal No. 113 of 2018 was struck out. Hence, the illegality complained of is sufficient reason for the extension of time.

To buttress his arguments, the learned advocate referred to several decisions such as VIP Engineering and Marketing Limited & 2 others v. Citibank Tanzania Limited Consolidated References No. 6, 7, 8 of 2006 Court of Appeal (unreported), Principal Secretary, Ministry of Defence National Service v. Devram Valambia [1992] TLR 185 and Kulunga and Company Advocate v. National Bank of Commerce Ltd [2006] TLR 235.

On reply, Mr. Peter contended there is no technical delay because the applicant had tendency of filing and withdrawing applications before

the tribunals and courts as envisaged on her submission. He was also firm that, the learned advocate for the applicant never pointed out the alleged technical delay.

With respect to the complaint that the applicant is a lay person, Mr. Peter maintained that, the assertion was not correct since the applicant in the matter before the DLHT was represented with advocates. He thus urged the court to disregard the case laws cited by the applicant's counsel for not being relevant.

He further submitted that regarding the complaint of illegality, the applicant has not shown whether the decision of DLHT is tainted with illegality. He maintained that, Land Appeal No. 113 of 2018 was properly determined.

Mr. Peter furthered his argument that, from the beginning of the matter before the trial tribunal there was no element of illegality. He argued that the complained illegality does not meet the criteria set out by law. He therefore prayed the court to dismiss the application.

On rejoinder Mr. Mbeya essentially reiterated what he has submitted in his submission in chief.



Having gone through parties' rival submission as well as the opposing affidavits in relation to this application, the sole issue for my determination is whether the application has advanced sufficient reasons for this court to extend time.

The instant application has been preferred under section 41(2) of the Act. It empowers the court to grant an extension of time to lodge an appeal upon good cause 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].*

From the foregoing provision, before the court can exercise its discretion for extension of time, but the applicant must advance good cause. However, the provision of the law quoted above does not state what constitutes to good cause.

In a number of times, the court has elaborated what amounts to good cause. In the case of **Osward 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"

It follows therefore that, what constitutes good cause depends on the circumstance of each case. This court guided with the case laws in determining whether the applicant has advanced good cause to be taken into consideration in determining this application.

Amongst the factors to be taken into account were succinctly 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) while referring to the decision of Court Appeal in the case of **Bertha Bwire v. Alex Maganga**, Civil Reference No. 7 of 2016, where it held 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 reasons to be considered are; whether the applicant has accounted for each day of delay and whether there is any point of law of

sufficient importance. This elaboration was made by Court of Appeal 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).

Guided by the above factors, in determination of the present matter, it is not in dispute that, after the determination of the matter before the trial ward tribunal, the applicant timely lodged her appeal before the DLHT. The said appeal was struck out on 29/9/2021.

After her appeal was struck out, the applicant lodged Misc. Land Application No. 7 of 2022 on 11/1/2022 before the DLHT seeking for an order for extension of time. The said application was dismissed on 18/8/2022. The applicant again lodged an application No. 141 of 2022 before the high court Arusha registry seeking for extension of time to appeal against the decision in Misc. Land Application No. 7 of 2022.

The land application No. 141 of 2022 was withdrawn and thereafter the applicant lodged the instant application.

Mr. Peter refuted this argument stating that there was no technical delay and the actions of the applicant was not caused by the fact that she was ignorant of law. He maintained that the applicant was represented with advocates.



I have reproduced the steps above which were taken by the applicant in her attempts to challenge the decision of the trial tribunal. After the dismissal of Misc. Land Application No. 7 of 2022 the applicant should have lodged an appeal in this court within 45 days as provided for by section 41(1) of the Act. Nonetheless, the applicant ended up filing Misc. Land Application No. 141/2022 before the DLHT.

The decision in Misc. Land Application No. 7 of 2022 was delivered on 18/8/2022 and Misc. Land Application No. 141 of 2022 was lodged in court on 27/9/2022. It is with no a doubt that the latter application before this court was lodged within the 45 days of appeal. The same was withdrawn on 4/4/2023 and this application was lodged on 6/4/2023.

According to the record, it has not been disputed that the applicant at certain stages she was represented before the court of law in pursuing her matters. However, all along she was busy pursuing different rights before the DLHT and before this court.

Therefore, the case of **Bharya Engeneering Contracting Ltd. V. Hamoud Ahmad Nassor**, Civil Application No. 342/01 of 2017 the Court of Appeal, cited by the applicant's counsel is relevant in explaining this kind of technical delay.



I am therefore satisfied that there was a technical delay which was caused by the time spent in filing and prosecuting Misc. Application No. 141 of 2022 which as I have pointed before was filed within time. In the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa**, Civil Application No. 520/18 of 2017 (unreported), the Court of Appeal held that a prosecution of an incompetent appeal when made in good faith and without negligence, *ipso facto* constitutes sufficient cause for extension of time.

In the instant matter there was prosecution of an incompetent application which was filed within prescribed period of time.

Having found that there was a technical delay caused by prosecution of Misc. Land Application 141 of 2022 the issue for my determination is whether the applicant acted promptly in filing the instant application.

Going through the record, Misc. Land Application No. 141 of 2022 was withdrawn on 4/4/2023 and the instant application was lodged in court on 6/4/2023. This means that this application was lodged about 2 days following withdrawal of Misc. Land Application No. 141 of 2022. Thus, there is no doubt the applicant acted promptly.



Consequently, I find that the applicant had advanced sufficient reason for the extension of time. Thus, the applicant is granted a period of 21 days within which to lodge her appeal. Costs to follow events. It is so ordered.

Dated at Babati this 20th September 2023.



G. N. BARTHY

JUDGE

Delivered in the presence of the parties in person and the absence of their advocates.