

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND APPLICATION NO. 25 OF 2023

(Arising from the Decision of the District Land and Housing Tribunal for Tabora in Land Case Application No. 56 of 2022)

JUMANNE SIZYA APPLICANT

VERSUS

JEMS MASONGANYA SIZYA RESPONDENT

RULING

Date of Last Order: 24/08/2023

Date of Delivery: 03/10/2023

KADILU, J.

In the District Land and Housing Tribunal for Tabora, the applicant was the claimant in Land Application No. 56 of 2022. The respondent raised a preliminary objection on the point of law to the effect that the case was *res-judicata*. After the determination of the preliminary objection, the tribunal upheld it and delivered a ruling on 17/02/2023. Dissatisfied, on 20/02/2023 the applicant applied to the District Land and Housing Tribunal to be supplied with copies of the ruling and drawn order for appeal purposes. The same was not delivered to him in time. He wrote a reminder letter on 23/03/2023, but the said documents were not supplied to him until 08/06/2023. His Advocate, Ms. Stella Nyakyi stated that by that date, the time for filing an appeal was already lapsed.

She added that the appeal was supposed to be filed within 45 days from 17/02/2023 when the decision of the tribunal was delivered. For that reason, on 12/06/2023 the learned Advocate filed the instant application in this court seeking an extension of time to file the appeal out of time. In the application before me, the respondent was represented by Mr. Kelvin Kayaga, the learned Counsel. He raised a preliminary objection on the point of law to wit that the application is misconceived, bad in law and an abuse of court process. When the preliminary objection was called on for hearing, Mr. Kelvin submitted that under Section 19 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019] the day on which the impugned judgment was delivered and the period spent obtaining a copy of the judgment are excluded in computing the period of limitation prescribed for an appeal.

He explained that the 45 days for appeal were to be computed from 08/06/2023 when the appellant obtained the copies of ruling and drawn order. Mr. Kelvin added that from 08/06/2023 to 12/06/2023 when this application was filed seeking to file an appeal out of time, the applicant was well within time. He cited the case of ***Nicodemus Lusambo v Gerada Zacharia***, Civil Appeal No. 486 of 2022 in which the Court of Appeal held that for a party to enjoy from exclusion of the time spent to obtain certified copies of the judgment and decree, there must be a written request for the supply of the documents necessary for appeal purpose including a certified copy of judgment.

Mr. Kelvin argued that the applicant has shown that he wrote two letters to the tribunal requesting to be supplied with appeal documents and the same are attached to the application. According to the learned Advocate, this was sufficient proof to enable the applicant to enjoy the exclusion under Section 19 (2) of the Law of Limitation Act and file his appeal right away. Finally, Mr. Kelvin implored this court to strike out the application with costs.

Ms. Stella refuted the proposition by Mr. Kelvin that she sought for extension of time which she was still having. She maintained that since the ruling was delivered on 17/02/2023, the 45 days within which the applicant would file his appeal expired on 31/03/2023. She explained that the only remedy which was available for the applicant was to file an application for extension of time as he did. She argued that filing the appeal after 31/03/2023 would mean risking the appeal to be struck out for being time-barred. To support her argument, she cited the case of ***Gerada Zacharia v Nicodemus Lusambo***, Land Appeal No. 05 of 2021, High Court of Tanzania at Kigoma. She then prayed for this court to grant the application.

I have gone through the affidavit, counter affidavit and submissions by Advocates for the parties. The issue for me to determine is whether the applicant has established sufficient reasons for the delay which persuade the court to grant leave to file appeal out of time. Under s. 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019], the applicant is required to account for each day of delay by giving reasonable and sufficient reasons for the delay. As to what amounts to good or sufficient cause, the Court of Appeal in the

case of ***Jumanne Hassan Bilingi v R.***, Criminal Application No, 23 of 2013 it was stated as follows:

*"...what amounts to good cause is upon the discretion of the court and it differs from case to case. But basically, various judicial pronouncements define good cause to mean, **reasonable cause** which prevented the applicant from pursuing his action within the prescribed time."*

As indicated, the complained judgment was delivered on 17/02/2023. Under Section 41 (2) of the Land Disputes Courts Act, the appeal was supposed to be filed within 45 days from the date of the ruling or from 08/06/2023 when the copies of a ruling and drawn order were supplied to the applicant. In any case, counting from 08/06/2023, the 45 days did not expire until 23/07/2023. Therefore, on 12/06/2023 when the applicant filed this application seeking for extension of time, he still had more than forty (40) days within which he could file his appeal.

I am mindful that the court has discretion to grant extension of time in applications like the present one, but I am also aware that such discretion is supposed to be exercised judiciously. This is to say, the discretion should be exercised in accordance with the rules of reason and justice and not arbitrarily. The Court of Appeal in various authorities has tried to set guidelines to be followed by the courts below it, when exercising discretion to either grant or refuse to grant the applications for extension of time.

For example, in the case of ***Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian***

Association of Tanzania, Civil Application No. 2 of 2010, the factors to be considered before granting any extension of time were laid down:

- (a) The delay should not be inordinate;*
- (b) The applicant must account for all the period of delay;*
- (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 reasons such as existence of a point of law of sufficient importance; or the illegality of the decision sought to be challenged.*

As per the records, the delay in this application was for four (04) days calculated from 08/06/2023 when the copies of ruling and decree were supplied to the applicant to 12/06/2023, the date in which the application was filed. Under normal circumstances, this cannot be considered as inordinate delay. However, the applicant has failed to account for each day of delay. He also failed to show diligence because instead of filing his appeal within statutory time which he had, he wasted numerous days requesting for extension of time which was, in my view, unnecessary. This is a form of negligence or carelessness as he was represented by an Advocate who is trusted to be knowing the law very well.

It should be emphasized that negligence of an Advocate or his ignorance of the law and procedure, is not an excuse and does not constitute a sufficient cause for extension of time. See the decision of the Court of

Appeal in ***Jubilee Insurance Co. Ltd v Mohamed Sameer Khan***, Civil Application No. 439/01 of 2020. Further, in the case of ***Exim Bank (Tz) Ltd v Jacquilene A. Kweka***, Civil Application No. 348 of 2020, it was stated that:

"Firms are manned by lawyers who ought to know court procedures. ... failure of the Advocate to act within the detect of law cannot constitute a good cause for enlargement of time."

Besides, in the case of ***Omar Ibrahim v Ndege Commercial Services Ltd***, Civil Application No. 83 of 2020, the Court stressed that neither ignorance of the law nor Counsel's mistake constitutes good cause. In the instant application, the applicant has not raised any point of law of sufficient importance or alleged any irregularities in the decision of the District Land and Housing Tribunal. As such, the fourth factor for consideration as laid down in the case of ***Lyamuya*** (*supra*), is not applicable in this application. The law requires that for irregularity to stand as a ground for granting extension of time, the nature of the said irregularity should be apparent on the face of record. It has been shown that the applicant herein has not pointed out any irregularity, leave alone the one that is apparent on the face of record.

For the reasons stated herein above, the application fails, and is hereby dismissed with no order as to the costs.

It is so ordered.


KADILU, M. J.
JUDGE
03.10.2023.

Ruling delivered in chamber on the 3rd day of October, 2023 in the presence of Ms. Stella Nyakyi, learned Advocate for the applicant and Mr. Charles Ayo, holding brief for Mr. Kelvin Kayaga, Advocate for the respondent.




KADILU, M. J.

JUDGE

03.10.2023.