

THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND APPLICATION NO.19 OF 2023

(Arising from Judgment of the District Land and Housing Tribunal of Moshi at Moshi in Application No.13 of 2017 dated 8th day of March, 2013)

KAROLI KIMARIO.....APPLICANT

VERSUS

PETRO MAKINI.....RESPONDENT

RULING

18th September & 11th October 2023

A.P.KILIMI, J.:

This ruling is in respect to application for extension of time within which to lodge an appeal out of time against a decision in Land Application No.13 of 2017 of Moshi District Land and Tribunal which was delivered on 8th day of March, 2013. This application is brought under section 14 (1) of the Law of Limitation Act (Cap 89 RE 2019) and any other enabling provision of the law. The same was supported by the affidavit duly sworn by the applicant.

The brief facts which gave rise to this application were to the effect that, the respondent successfully filed an application mentioned above at the

District Land and Housing Tribunal at Moshi, claiming for ownership of suit land measuring 9.62 acres situated at Kisangesangeni Village in Mwereni Mkonga Chini within Moshi District. Having heard above parties and their witnesses on merit, the tribunal declared the respondent lawful owner of the suit land. Thereafter, the applicant having intention to appeal struggled to find for copies of judgment and decree more than once. At final received them but he was out of time to file the appeal he wished; it is now resorted to this application.

When the matter came for hearing, Mr. Faustin Materu a learned Advocate appeared for respondent whereas the Applicant stood himself unrepresented. Both agreed this application be argued by way of written submissions and I applaud both for timely filing of the same. However, since the applicant has filed affidavit and respondent filed counter affidavit. I will refer to submissions when the need arises.

In supporting this application, the applicant submitted that, he sought for copy of judgment at the tribunal in order to give to a lawyer for drafting legal document, in such respect he wrote to the tribunal letters dated 8 March 2023, and another letter on 3rd April 2023. Later, being not availed the same, he wrote a reminder letter dated 27th April 2023 and copies were

issued the same day of this letter. It was when the Applicant travelled to Dar es Salaam to search for a lawyer to advise him and where necessary to draft the required legal documents. By the time he arrived in Dar es salaam on the evening he found the Legal and Human Rights Centre office in Kinondoni already closed. The next day was Friday, Applicant could not visit the office on 29th and 30th of weekend.

The applicant further submitted that, on the next Monday and Tuesday, Applicant sought legal serves from that said Legal office, whereat he was informed to visit Arusha Legal Aid Office as the responsible office for Kilimanjaro Region that the impugned case originates. He further said the same was stated in his affidavit and was not disputed by Respondent in the Counter affidavit. On the next day, on 3rd May 2023, he travelled to Arusha and visited the said legal branch office on the following day. It was on 5th May 2023; Applicant was availed with this Application for Extension of time to be filed in this Court.

From the above, the applicant is praying this court to exercise its discretion because he has accounted for each day of delay and the same has not been resulted by Applicant negligence or sloppiness. He also said the

delay has been occasioned by the District Land and Housing Tribunal not to supply the documents for preparation of the Appeal in time. To bolster his assertion referred the cases of **Mahamudi Ally vs Oliver Daniel (Administrator of the Estate of the late Daniel Manywili) and 3 Others** Misc. Civil Application No. 96 of 2021 and **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported).

The applicant further submitted that he did not underperform on her efforts to file an application for leave but was just prevented by the circumstances submitted above, to fortify his view invited me to consider the case of **Mobrama Gold Cori) Oration vs. Minister of Energy & Minerals and 2 Others** (1998) TLR 425.

Furthermore, the applicant submitted that he intends to challenge several illegalities that will be addressed by this Court, therefore in order to demonstrate all the illegalities, has asked the prudent of this Court to allow the application. He then invited this court to consider the case of **Transport Equipment LTD vs D.P Valambia** 1993 T.L.R 91; **Exim Bank Tanzania Ltd Vs Johan Harald Abrahamsson and 3 others**, Civil Reference No.

11 of 2018, CAT at Dar Es Salaam; and **Convergence Wireless Networks (Mauritius) Limited and 3 Others vs Wia Group Limited and 2 Others**, Civil Application No. 263 "B" of 2015 (unreported)

The applicant concluded by arguing that the respondent will not be prejudice by any means when this application will be granted. Either if this application is granted, he would have high chances of succeeding in appeal. To supported this assertion, he referred to me the case of **Samson Kishosha Gabba vs Charles Kingongo Gabba**, (1990) TLR 133.

Responding to above submissions, the respondent's counsel contended that, the applicant was not diligent after being availed with the copy of judgment, this is because it was given to him on 27/4/2023, then decided to travel all the way to Dar-es-Salaam while the proper office of the Legal and Human Rights Offices are at Arusha, this has caused him to file the present application 12 days after he was given the relevant copies.

He further contended that at Arusha he met with advocate who advised him that days of obtaining a copy of judgment are excluded, thus, the applicant could have filed his appeal in the High Court registry by 11/6/2023, but the applicant opted to sit on his rights by filing this application on

9/5/2023, instead of filing an appeal which would still have been within time. The respondent further observed that, he therefore not deserves to be granted extension as prayed. To support his statements above the counsel referred the provision of section 19(2) of the law of limitation Act and the case of **Barenga Mungozi vs May Ntunzwe** [2002] TLR 141.

In response to illegality stated above, the respondent's counsel contended that, the applicant has not shown in his submissions the alleged illegality done by the trial tribunal which need to be acted upon or addressed by the High Court. The respondent further analysed what transpired at the tribunal and hold that no illegality tainted at the tribunal decision, thus prayed the application be dismissed.

In his brief rejoinder the applicant contended that section 19(2) and (3) of the Law of Limitation Act is irrelevant with this matter at hand, because this matter is for extension of time to file petition of appeal out of time which brought under Section 14(1) of the Law of Limitation Act Chapter 89 R.E.2019. Thus, it was expected the argument to base on this Section instead of the said above. The applicant further argued that, the counsel for the Respondent has argued on the merit of the case which pre-empted the

main case while the matter is on the extension of time. Therefore, the applicant continued to insist this court to grant the prayer sought.

Having considered the rival submissions filed, in my view the finding of this matter is simple and straight forward, and for convenient there are two points for determination, first whether the applicant has accounted for each day of delay and two whether there was illegality to enable this court extension of time.

Before, I dwell into the merit of the above points, I am driven to say that, since the applicant has moved this court by the provision of section 14(1) of law of limitation (supra), although it is the discretion of this court to grant extension of time, the above law provides for requisites to be considered, for purpose of clarity let me reproduce the same hereunder;

*"14(1) Notwithstanding the provision of this Act, the court may, for **any reasonable or sufficient cause**, extend the period of limitation of an appeal or an application, other than an application for execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application"*

[Emphasizes supplied]

From the excerpt above, it is undisputed that an application for extension of time is entirely in the discretion of the court to grant or refuse it. The provision above entails the discretion bestowed into courts should be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant, illegality etc. (See **Usufu Same and Hawa Dada vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002. (unreported)).

Moreover, the provision above has been dealt by the court of this land, that the extension of time may only be granted upon good cause being shown and where the delay has not been caused or contributed by the dilatory conduct on the part of the applicant. See **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 CAT and **Jaluma General Supplies Limited vs. Stanbic Bank Limited**. Civil Application No.48 of 2014 CAT (Both unreported).

Back to this application, to start with the second point of illegality, I have entirely scanned applicant's affidavit and also his submissions despite are not evidence, as rightly pointed by respondent's counsel the same is not shown anywhere, to my view, it was not proper for the applicant merely saying at paragraph 13 of his affidavit that court should extend time for the serious illegality committed by the trial tribunal without explaining them.

It is a trite law, for illegality to be a ground for extension of time, it must be apparent on the face of record. There is a litany of case laws as to what is apparent error on the face of record. To mention few are the case of **African Marble Company Limited (AMC) vs Tanzania Saruji Corporation (TSC)**, Civil Application No. 8 of 2005 [2005] TZCA 87 and **Chandrakant Joshubhai Patel v. Republic**, [2004] TLR 218, **Abdi Adam Chakuu vs Republic**, Criminal Application No. 2 of 2012 [2017] TZCA 138, **Ansaar Muslim Youth Center vs Ilea Village Council & Another**, Civil Application No. 310 of 2021 [2022] TZCA 615 to mention but a few. In **Chandrakant's case** (supra), the Court of Appeal held that: -

" An error apparent on the face of the record must be such as can be seen by one who runs and reads, that is, an obvious and patent

mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions...It can be said of an error that is apparent on the face of the record when it is obvious and self-evident and does not require an elaborate argument to be established..."

In view of the above authority and my reasons stated, I am of considered opinion this point of illegality has nothing to help the applicant in his application.

Next, the point raised by the applicant in his submissions that he has the chances of success when the extension will be granted was not stated in his affidavit, therefore is hereby disregarded and this is because submissions are not evidence and they cannot be used to substitute the contents of their affidavit as it was observed by the Court of Appeal of Tanzania in the case of **Bruno Wenceslaus Nyalifa vs Permanent Secretary, Ministry of Home Affairs and the Attorney General**, Civil Appeal No. 82 of 2017 where it was held that:

"Submissions are not evidence submissions are generally meant to reflect the general features of a party's case. They are elaborations on evidence already tendered. They are expected to contain arguments and the applicable law. They are not intended to be a substitute for evidence."

However, I agree with the respondent's counsel contention that the period used in obtaining the copies of decree and judgment is excluded when computing the time to file an appeal, but since the same need to be proved in order to file the appeal delayed, under the circumstances of this matter, this application was necessary to prove to the High Court the reasons for delay, to make the same be admitted.

In respect to the account of each day of delay, I have considered applicant's affidavit especially his acts of follow up for copies of judgment and for preparation of the appeal documents, which he has stated at para 5,6,7,8,9 and 10 respectively. In my view the applicant despite of being a lay person has shown diligence and promptness in struggling to file the appeal but he was late due to hindrance which was out of his control.

In the premises for the two points discussed above, I am settled that, the applicant has furnished sufficient reasons for this this application to be granted. Consequently, I hereby grant the application as prayed. I order the applicant to file his appeal within 21 days from the date of this ruling. In the circumstances no order for costs granted.

It is so ordered.

DATED at MOSHI this 11th day of October, 2023.



X

JUDGE

Signed by: A. P. KILIMI

Court: - Ruling delivered today on 11/10/2023 in the presence of both parties and Mr. Faustine Materu for respondent absent.

Sgd: A. P. KILIMI
JUDGE
11/10/2023