

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**MISC. CIVIL APPLICATION NO. 19 OF 2023**

(Arising from the decision of the District Land and Housing Tribunal for Manyara at Babati in Land Application No. 235 of 2021)

**MARIETHA TLUWAY .....APPLICANT**

**VERSUS**

**FABIOLA MARTINI.....RESPONDENT**

**RULING**

30/8/2023 & 28/9/2023

**BARTHY, J.**

The applicant herein aggrieved with the decision of the District Land and Housing Tribunal for Manyara at Babati (hereinafter referred to as the trial tribunal) in Miscellaneous Land Application No. 235 of 2021; but unable to challenge the same timely. She thus preferred the instant application under section 14(1) of the Law of Limitation Act [CAP 89 R.E 2019], (the Act) seeking for the following orders;

- 1. That, this honourbale court be pleased to grant an order of an extension of time to file an application for*



*revision in miscellaneous application No. 235 of 2021  
in district land and housing tribunal for Manyara at  
Babati dated the 13<sup>th</sup> day of May the year 2022 out of  
time.*

*2. That, costs in due course.*

*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 a counter affidavit to contest the application.

By parties' consensus, the application was disposed of by way of written submissions. Mr. Erick Erasmus Mbeya learned advocate drew and lodged the applicant's submissions, while the respondent was represented by Mr. Pascal Peter learned advocate.

According to the schedule made by the order of the court, the applicant ought to have lodged her submission in support of the application on or before 11/9/2023, the respondent's reply thereof was to be lodged on or before 21/9/2023 and rejoinder submission if any

was to be filed by applicant on or before 26/9/2023. The matter was then scheduled for ruling on 28/9/2023.

It is on record that the applicant lodged her submission timely, up to the time this court was preparing its ruling the respondent had not filed her reply submission. Hence, there was no rejoinder submission filed by the applicant. Then this court proceeded with the determination of the instant application, basing on the applicant's submission only.

Mr. Mbeya on his submission in support of the application, at the foremost he adopted the affidavit in support of the application. He went on to argue that, the respondent instituted Land Application No. 1 of 2020 before Arri Ward tribunal claiming for compensation for maliciously damage of sisal plants and trees valued at Tsh. 255,000/=. The trial ward tribunal then decided in favor of the respondent.

He further submitted that; the respondent applied for execution before the trial tribunal vide Miscellaneous Land Application No. 235 of 2021, which was subsequently satisfied. He also argued that, the appellant then lodged Land Appeal No. 58 of 2022 before the High Court at Arusha, but the same was withdrawn on 21/2/2023. Hence, the applicant lodged the instant application.



According to the applicant's affidavit and submission made in her favour, the reason for delay in lodging the application for revision timely was attributed by technical delay caused by time spent in prosecuting Land Appeal No. 58 of 2022. To buttress the argument Mr. Mbeya cited the case of **Martha Daniel v. Peter Thomas Nko** [1992] TLR 359, whereby the court held that, technical delay, do constitutes sufficient cause.

The similar stance was reiterated in the case of **Ramadhani Nyoni v. M/s Haule & Company Advocates** [1996] TLR 71 and **Christopha Cosmas v. Furaha Evarist**, Misc. Civil Application No. 67 of 2021 High Court of Tanzania at Mwanza (unreported).

Mr. Mbeya pointed out that, the decision sought to be challenged is tainted with serious irregularities as the trial tribunal had no jurisdiction, he was firm that the applicant was condemned unheard.

He further added that, the decision of ward tribunal did not disclose the gender and status of members as required by the law. To this he referred the case of **Christopher Wantora v. Masero Meck Makura** Land Appeal No. 112 of 2021, High Court of Tanzania at Musoma (unreported).



Mr. Mbeya argued that, illegality constitutes good cause for extension of time. To prop his arguments, he referred to cases of **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.

Mr. Mbeya stated that, initially the applicant had lodged Land Appeal No. 58 of 2022 at the High Court at Arusha registry, but the same was struck out on 21/2/2023. He therefore urged the court to grant the prayers sought.

Having gone through the applicant's submission as well as the affidavit in support of the application, the sole issue for my determination is whether the applicant has advanced sufficient good cause to warrant granting this application.

This application has been preferred under section 14(1) of the Act. It empowers the court to grant an extension of time to lodge an appeal or application upon reasonable or sufficient cause being shown. The said provision provides that;



*Notwithstanding the provisions of this Act, the court may, for **any reasonable** or **sufficient cause** extend the period of limitation for the institution of an appeal or an application, other than an application for the 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. [Emphasis added].*

From the foregoing provision of the law, the court can exercise its discretion for extension of time upon the applicant showing reasonable or sufficient cause. The provision however, does not define what amounts to "reasonable or sufficient good cause".

In determining whether, in a particular case, sufficient cause has been established or not, a number of factors have to be taken into account depending on the circumstances of each particular case.

The Court has to consider if the applicant was diligent, he advanced reasons for the delay, the length of the delay, the degree of prejudice to the respondent if time is extended, whether there is a point of law or the illegality on the impugned decision.



The above factors for consideration have been adopted as guiding principles in application for extension of time like the present one. Some of those decisions are, Dar es Salaam City Council v. Jayantilal P. Rajan, Civil Application No. 27 of 1987, 11 Tanga Cement Co. v. Jumanne Masangwa and another, Civil Application No. 6 of 2001, Tanzania Revenue Authority v. Tanga Transport Co. Ltd, Consolidated Civil Applications No. 4 of 2009 and 9 of 2008.

Also, see the cases of Bertha Bwire v Alex Maganga, Civil Application No. 7 of 2016, Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Reference No. 8 of 2016, Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (all unreported) to mention but few.

Again, in the applications for extension of time, it is the position of the law that for the court to extend time, every day of delay must be accounted for. A similar stance was held by court in the case of Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 and Bariki Israel v Republic, Criminal Application No. 4 of 2011 (both unreported). In the former case, the Court of Appeal stressed that:

*"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules*

*prescribing periods within which certain steps have to be taken".*

Guided by the above factors, it is on record that the impugned decision was delivered on 13/5/2022 and the applicant lodged Land Appeal No. 58 of 2022 before the High Court at Arusha Registry. It is also not in dispute that, the said appeal was filed within time.

After his appeal was struck out on 21/2/2023, the applicant lodged an appeal instead of revision. The instant application was filed on 10/3/2023 after her appeal was struck out.

I have taken into account the arguments by Mr. Mbeya that, there was a technical delay which was caused by the applicant spending time in filing and prosecuting Land Appeal No. 58 of 2022. A similar position was addressed by court in the case of **Denis T. Mkasa v. Farida Hamza & another**, Civil Application No. 407 of 2020, Court of Appeal of Tanzania at Mtwara (unreported) 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.*





Also, 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. The similar stance was underscored in the case of **Bharya Engineering & Contracting Co. Ltd v Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017 (unreported).

Going by the affidavit in support of the application particularly on paragraphs 7, 8 and 9, the applicant has established technical delay as the reason for her delay. Since there was indeed an appeal lodged timely, but it was struck out the remedy available for the applicant was to lodge this application.

Having found that there was a technical delay caused by prosecution of Land Appeal No. 58 of 2022, the issue for my determination is whether the applicant acted promptly in filing the instant application.

In addressing the same, I have consulted the decision of the court in the case of **Samwell Mussa Nq'omango (as a legal representative of the Estate of the late Masumbuko Mussa) v. A.I.C. (T) Ufundi**, Civil Appeal No.



26 of 2015 (unreported), the Court of Appeal having considered the circumstances of the case observed that;

*"In my firm view the applicant acted promptly and diligently having filed the present application in less than 20 days since he obtained the certificate"*

[Emphasis added]

In another case of Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) v. Mtumwa Moshi (as the Administered of the Estate of the late Moshi Abdallah), Civil Application No. 407/17 of 2019 (unreported), the Court of Appeal held this;

*"After the latter application was struck out; the applicant took hardly a month to file the present application seeking for extension of time to file an appeal. In other words, the applicant was diligent all along to file an appeal. [Emphasis added]."*

Going by the record, Land Appeal No. 58 of 2022 was withdrawn on 21/2/2023 and the instant application was lodged on 10/3/2023. Hence, the instant application was filed after the lapse of 17 days. I find that 17 days was not an inordinate delay.



Consequently, I find that the applicant has advanced sufficient reason for this court to consider granting extension of time. Thus, I grant the applicant the period of 30 days from the date of this ruling within which to lodge the application for revision. Costs to follow events. It is so ordered.

**Dated at Babati this 28<sup>th</sup> September 2023.**



*G. N. Barth*  
**G. N. BARTHY**  
**JUDGE**

The ruling delivered this 29<sup>th</sup> day of September, 2023 in the presence of both parties.

**Sgd: B. A. MPEPO**  
**DEPUTY REGISTRAR**  
**29/9/2023**