

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 40 OF 2022

(Originating from Land Complaint No. 11 of 2012 in the Maroroni Ward Tribunal, Land Appeal No. 17 of 2013 in the District Land and Housing Tribunal of Arusha at Arusha and Land Appeal No. 24 of 2014 in the High Court of Tanzania at Arusha)

ELIPOKEA NGOE.....APPLICANT

VERSUS

KATARINA KAVEI.....RESPONDENT

RULING

7/08/2023 & 5/10/2023

GWAE, J

The applicant has filed this application seeking for extension of time to file notice of appeal to appeal to the Court of Appeal of Tanzania. The application is brought under the provisions of section 11 (1) of the Appellate Jurisdiction Act Cap 141, Revised Edition, 2019 and is supported by the affidavit of the applicant. The respondent on the other hand opposed the application through a counter affidavit of her advocate, Mr. Lengai Nelson Merinyo.

It is the applicant's assertions through his affidavit and annexures thereto that, he unsuccessfully filed a suit against the respondent at

Maroroni Ward Tribunal, dissatisfied by the decision of the Ward Tribunal the applicant filed his appeal to the District Land and Housing Tribunal for Arusha where he was also the losing party. Persistent to pursue his rights, he appealed to this court unsuccessfully, again he lodged his appeal to the Court of Appeal of Tanzania as second bite. On 21st September 2021, the Court of Appeal strike out the appellant's appeal for failure to include the certificate on points of law.

After the order of the Court of Appeal of Tanzania striking out the appellant's appeal, on 12th November 2021 he filed an application before this court for extension of time to file an application for certificate on points of law. His application was granted on 22nd June 2022. Thereafter, on 22nd July 2022 the applicant also filed an application for certificate on points of law however the same was withdrawn on 12/12/2022 with leave to re-file after the applicant had discovered that he had not yet filed notice of appeal to the Court of Appeal.

Seeking the indulgence of this court to exercise its discretionary powers in extending time, the applicant has pleaded financial difficulties to engage an advocate since 12th December 2022 to 03rd April 2023 and illegalities in the impugned decisions demonstrated at paragraph 9 (i) – (vii) of the affidavit.

This Court has also captured the following from the respondent's counter affidavit; that it was the contention of the respondent that the applicant herein has not accounted for each day of delay from 21st September 2021 when the applicant's appeal was struck out by the Court of Appeal to 3rd April 2023 when this application was filed. The respondent also contended that the illegalities pointed out by the applicant are not apparent on the face of record of the decisions to be challenged.

When the matter was called on for hearing, Mr. Fridolin Bwemelo advocate represented the applicant whereas the respondent enjoyed legal services from advocate, Lengai Nelson Merinyo. Parties' advocates orally argued the application and I shall take their arguments on board while composing the ruling

From the submissions of the parties' counsel, it is imperative that the applicant's delay is categorically termed as a technical delay taking into account that the original appeal to the Court of Appeal of Tanzania was primarily filed within time. The issue of technical delay has been dealt with in a number of decisions both of this Court and those of the Apex Court of our country. In the famous case of **Fortunatus Masha vs. William Shija and Another** (9997) TLR 154, the Court of Appeal of had the following to say with regard to technical delay;-

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances, an extension of time ought to be granted. "

Despite the fact that the applicant's delay may be termed as a technical delay nevertheless I am disturbed by the time from when the applicant's appeal was struck out by the Court of Appeal to the time of filing this application. Well, the applicant has pleaded that after the appeal was struck out, he filed two applications, the first one was on extension to file an application for certificate on points of law, and the second one was an application on the certificate on points. The latter application was withdrawn after discovering that the requisite notice has to be filed first before an application for certificate on point (s) of law.

Guided by section 21 of the Law of Limitation Act Cap 89, Revised Edition, 2019 the time that the applicant used in pursuing the two applications is to be excluded in computing the time limitation. However, from the pleadings it is clearly stated that, the last application was

withdrawn on 12th December 2022 and this application was filed on 3rd April 2023 making a delay of 112 days. The applicant was legally required to account for each single day of delay to convince the Court that he was not negligent or sloppy. There is plethora of authorities of the Court of Appeal of Tanzania which held that failure by an applicant to account for each day of delay will not trigger the Court to grant the extension of time sought. In **Bushiri Hassan**, the Court of Appeal of Tanzania insisted on the need for the applicant seeking an extension of time to account for each and every day of delay wherein it was stated: -

"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."

See also **Sebastian Ndaula v. Grace Rwamafa (Legal personal representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014, **Tanzania Coffee Board v. Rombo Millers Ltd**, Civil Application No. 13 of 2015, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (all unreported) to mention some.

Applying the cited decisions to the facts at hand, I am convinced that the applicant has failed to show that he was diligent and that this application was filed expeditiously without sloppiness. To say the least,

the applicant has pleaded on financial constraint to engage an advocate as a reason for his delay. Financial difficulties have never featured as a sufficient reason for extension of time. This position of law was correctly stressed in **Yusufu Same and Another v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported). Yet the Court of Appeal in its decision in the case of **Constantine Victor John vs Muhimbili National Hospital**, Civil Application No. 214/18 of 2020 (Unreported) was of the view that financial constraint can be a sufficient reason depending on the circumstances of the case.

In the matter at hand, the applicant pleaded that his delay was due to the reason that he was looking for financial support for legal representation. With due respect with applicant, this court is of the firm view that for the principle in the above case of **Constantine Victor John** to apply, the applicant ought to have explained as to how he suffered financial difficulties. The difficulties, which caused his delay to file the notice to the Court of Appeal taking into account this Court, observed that the applicant was able to engage an advocate when filing an application for certificate on point of law in this court. Therefore, it is my observation that the applicant's assertion that he was facing financial difficulties

without explaining into details does not suffice to be a good reason for extension of time.

That being said, I now turn to the *2nd ground that the impugned decisions suffers from illegalities*. To put the records clear I wish to reproduce the alleged illegalities as reflected in the applicant's affidavit as follows;

1. The High Court erred in law by upholding the decision of the District Land and Housing Tribunal of Arusha at Arusha and Maroroni Ward Tribunal which was bad in law.
2. That, the 1st and 2nd appellate Court failed to take into account that the appellant herein stayed in the disputed land since 1985 without any disturbance and some of his children and relatives were buried there.
3. That, both the 1st and 2nd appellate Court failed to deal with an issue of biasness against some members of Maroroni Ward Tribunal as raised by the appellant.
4. That, the 1st and 2nd appellate Court failed to consider serious errors and illegality occurred during trial before Maroroni Ward tribunal.
5. The High Court declaring the respondent a lawful owner of the disputed land while there was no evidence adduced to prove the same.

6. The High Court erred in law by upholding decision of the Tribunal which ignored the documentary evidence adduced by the appellant during the trial.
7. That, the Maroroni Ward Tribunal issued ex parte order dated 29/10/2012 despite the appellate letter to inform the tribunal on his absence, moreover the tribunal continue with the matter inter parties without setting aside that ex parte order.

It has been the position of the law that when the point at issue is one alleged illegality of the impugned decision, the court has a duty, even if it means extending the time for the purpose, to ascertain the point and if the alleged illegality is established. In the case of **Finca (T) Limited & another vs. Boniface Mwalukisa**, Civil Application No.589/12 of 2018 (Unreported) it was expounded that in those cases where extension of time was granted was, upon being satisfied that, there was illegality. The illegalities were explained and were apparent on the face of the record not one that would be discovered by a long-drawn argument or process (See the decision in the case of **Principal Secretary Ministry of Defence and National Service vs. Devram Valambia** (1999) TLR 182.

In the instant application, the applicant through his affidavit at paragraph nine (9) demonstrated seven (7) points of illegalities, it is very unfortunate that the alleged points of illegalities are not apparent on the face of record, in fact the said points appear to be more likely as grounds of appeal.

Applying the principles in the above-cited cases, this court is not satisfied with what has been demonstrated by the applicant to constitute the alleged illegality, apparent on the face of record. Therefore, the same cannot be a good cause for the court to grant the prayer sought in this application.

In the event, the applicant is found to have failed to illustrate good cause that would entitle him extension of time as sought. This application is consequently dismissed with no order as to costs.

It is so ordered.

DATED at **ARUSHA** this 5th day of October 2023




MOHAMED R. GWAE
JUDGE