

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 52 OF 2023

(C/F Application No. 39 of 2018 District Land and Housing Tribunal of Karatu at Karatu)

BALTAZAR GABRIEL DIONISI APPLICANT

VERSUS

EMMANUEL SHABADI MAYO RESPONDENT

RULING

13th September, & 13th October, 2023

TIGANGA, J.

The applicant is seeking for extension of time to appeal out of time in this Court against the decision of the District Land and Housing Tribunal of Karatu in Application No. 39 of 2023. In that endeavor, the applicant moved this court by a chamber summons made under section 41 (2) of the **Land Disputes Courts Act**, [Cap 216 R.E 2019] which is supported by an affidavit sworn by the applicant in which he deponed that, after the impugned decision was delivered on 07th December, 2022, he was not satisfied, hence he decided to appeal before this Court on 22nd January, 2023 through e-filing. However, his filing was unsuccessful due to the network failure. That, on 24th January 2023, he had to travel from Mbulumbulu to Arusha and, on

25th January 2023 he successfully filed Civil Appeal No. 11 of 2023 before the High Court of Tanzania at Arusha. The same was assigned before Gwae, J. but being aware that, he was out of time he prayed to withdraw the appeal to apply for extension of time as required by law hence the current application. He further deponed that, the main cause for his delay was poor network connection. He was not negligent.

Opposing the application, the respondent deponed that, according to the applicant, he initially filed his appeal on 21st July 2023 but the 45th day from when the impugned decision was delivered lapsed on 20th July 2023 hence he was already time-barred by two days. Further to that, he did not explain what made him not to file his appeal timely i.e. within 45 days from when the impugned decision was delivered. In his view, the applicant has not given sufficient cause as to why he failed to file his appeal timely.

During the hearing of the application which was by way of written submissions, presented their case both parties appeared in person, unrepresented. Supporting the application, in addition to what he deponed in his affidavit as briefly shown above, the applicant submitted that, his failure to file the appeal timely was due to a bad network connection and not due to negligence as alleged by the respondent. He referred this Court

to the case of **Murtaza Mohamed Raza Virani & Another vs. Mehboob Hassanali Versi** Civil Application No. 448/01 of 2020, CAT at DSM, which cited the case of **Lyamuya Construction Co. Ltd vs. Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2020 which set the principles to be considered in extension of time. In these case authorities, the principles are that, the applicant should account for each day of delay, the delay must not be inordinate, the applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action intended to be taken and for which the extension of time is sought, and or that there is an illegality on the decision sought to be challenged.

The applicant went on to submit that, he could not file this application when the appeal had already been lodged which is why he had to withdraw it to file the current application. He prayed that this Court avail him of his Constitutional right enshrined under Article 13 (6) (a) of the **Constitution of the United Republic of Tanzania**, 1977, and grant his application based on the reasons adduced herein above.

Opposing the application, in addition to what he deponed in his counter affidavit, the respondent submitted that, the main reason for the applicant's

failure to file his appeal timely was due to the fact that, there was a bad network on the last day of filing the appeal. However, he did not explain why he failed to file the appeal within 45 days required by the law. On top of that, after his appeal was lodged and later withdrawn on 21st March 2023 he waited until 03rd May 2023, i.e. 42 days later to file this application. He also referred the Court to the case of **Lyamuya Construction** (supra) and further argued that the reasons adduced by the applicant were not sufficient for him to be granted this application. He prayed that the same be dismissed with cost.

In his brief rejoinder, the applicant insisted that, when he initially started his appeal process, he was still in time however, the issue of network problems is what failed him.

After going through the party's affidavits as well as their rival arguments from both parties written submissions the question for determination is whether this application has merit. It is a trite principle that, the grant of extension of time is entirely upon the court's discretion, which however should be exercised judiciously. Moreover, the grant is not automatic, a party seeking it has to convince the court that he has genuine grounds and sufficient reasons or generally called good cause for his delay

before the court has exercised its discretion and granted for extension of time as it was held in decision of the case of **Benedict Mumello vs Bank of Tanzania**, Civil Appeal No 12 of 2012, CAT. There is no definition of what a good cause must entail in extending time, it can, however, be due to a number of factors such as whether the delay was not inordinate; and whether the applicant has sufficiently accounted for the days delayed; as well as whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take; or whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged. (See; **Attorney General vs. Tanzania Ports Authority & Another**, Civil Application No 87 of 2016 CAT and **Ramadhan J. Kihwani vs TAZARA**, Civil Application No. 401/18 of 2018, CAT (unreported).

In the application at hand, the applicant claimed that the delay was caused by a network problem from where he was i.e at Mbulumbulu, hence he had to travel to Arusha to file his appeal. Realizing that the time had already lapsed, he withdrew the appeal and filed the current application. Considering the fact that, the impugned decision was delivered on 7th December 2022 and the initial appeal was filed on 22nd January 2023 after

the lapse of 46 days, he was therefore one day late, a time which can be pardoned due to network problem as he deposed and submitted. However, after withdrawing the appeal initially filed, he did not immediately file the application for extension of time. Both parties are in agreement that, while the initial appeal was withdrawn on 21st March, 2023, this application was filed on 03rd May, 2023 after the lapse of 42 days and no reason was adduced for such delay. According to the applicant's affidavit and even in his submission, the network problem was in regard to the filing of the initial appeal which the applicant prayed to withdraw, and not on the current application. He did not even glossed on the reason for his delay in filing this application apart from claiming this to be his statutory right as enshrined in our Constitution. With due respect, that alone cannot earn him this Court's discretion in granting him an extension of time.

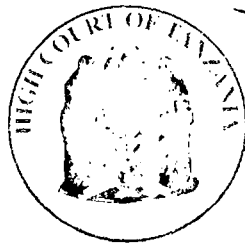

In the case of **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 the requirement of accounting every day of delay was emphasized as follows;

"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".

It is therefore my considered opinion that the applicant was required by law to account for all 42 days of delay which he did not do and failure to do so entitles him the grant of the application he has advanced. In light of the above, I find this application to be devoid of merits and proceed to dismiss it with cost.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 13th day of October 2023.

 
J.C. TIGANGA
JUDGE