

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

MISC. LAND APPLICATION NO. 61 OF 2023

(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Morogoro, at Morogoro in Misc. Land Application No. 5 of 2019 issued by Mmbando C.P. dated 19th January, 2023)

BETWEEN

ACKSA THADEI JOHN.....APPLICANT

VERSUS

STAMILI ISSA BANKINEZA.....1ST RESPONDENT

SUDI COSMASI CHINGWI.....2ND RESPONDENT

RULING

6th Sept & 31st Oct, 2023

M.J. CHABA, J.

On 11th August, 2023 the applicant filed this application seeking for enlargement of time to file an appeal against the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro in Application No. 5 of 2019 issued by Hon. Mmbando C.P., Esq. Chairperson dated 19th January, 2023. The application was made under section 14 of the Law of Limitation Act, [CAP. 89 R.E. 2019] and section 95 of the Civil Procedure Code, [CAP. 33 R.E. 2019].

The affidavit in support of the application beseeching the Court to grant the orders sought, was deposed by Acksa Thadei John, the applicant.

When the application was called on for hearing on 6/09/2023, the applicant and the 1st respondent appeared in persons, and unrepresented while the 2nd respondent didn't enter appearance. By the parties' consensus, this application was argued and disposed of by way of written submissions. The applicant and the first respondent complied with the Court's scheduled orders, hence this ruling.

Arguing in support of the application, the applicant submitted that the cause of delay is found under paragraphs 3 to 8 of the affidavit. Being the 2nd respondent at the original case, that is Application No. 5 of 2019 that was filed at the DLHT for Morogoro by the 1st respondent herein, she was dissatisfied by the decision of the DLHT for Morogoro, hence agreed with Sudi Cosmas Chingwi (the 2nd respondent herein) that he would make preparation for filing a joint appeal to the High Court. She averred that, the 2nd respondent herein assured her that, he filed a joint appeal before this Court. She highlighted further that, though she tried as much as she could to make follow up to the 2nd respondent so that she can be issued with the copies of the said appeal, but her efforts turned into futile.

However, she was later informed that the appeal has already been filed in this Court and it was set for mention on 3rd August, 2023 before me. In a bid to make follow up of the matter, the applicant attended in Court on the 3rd August, 2023 when Land Appeal No. 37 of 2023 between the 1st respondent and the 2nd respondent was placed before me for necessary orders. She stated that, from there it's when she realized that, the 2nd respondent herein didn't

include her names in the said appeal, and she was time barred to file an appeal. To bolster her submission, she cited the case of **Hodi (Hotel Management) Company Ltd Vs. Richard Nkomo**, Misc. Labour Application No. 12 of 2021 at Arusha HC (unreported) and **Bulyanhulu Gold Mine Vs. George Allen Gwabo**, Civil Application No. 23 of 2015; (CAT) sitting at Tabora, as proper authorities to rely on in the circumstance.

As regards to the ground of illegality, she accentuated that the decision of the DLHT contains illegalities to the effect that, the Tribunal wasn't properly constituted for it was composed by the Chairperson and one assessor which is in violation of section 23 (1) and (2) of the Land Disputes Courts Act, [CAP. 216 R.E. 2019], which states that:

"Section 23 (1) - The District Land and Housing Tribunal established under section 22 shall be composed of at least a chairman and not less than two assessors;

(2) The District Land and Housing Tribunal shall be dully constituted when held by a chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment;

(3) NA..."

It was the applicant's submission that, non-compliance with the written laws renders all decisions by any Court of law to be null and void. To support and reinforce her argument, she referred this Court to the case of **Afra Ligazio**

Vs. Revocatus Ligazio, Misc. Land Application No. 65 of 2021, HC (unreported), where the issue of improper composition of the DLHT was raised by the Court upon perusing the Court file and found irregularity on the side of assessors, hence nullified the judgment and proceedings from the DLHT for being inconsistent with the provision of section 23 (1) and (2) of the Land Disputes Courts Act (supra).

She went on submitting that, after going through the counter affidavit filed by the 1st respondent, she found that, there are no any fruitful materials to assist this Court in deliberation of the matter under consideration. The 1st respondent has made evasive denial which in law is an admission to the facts narrated by the applicant. She asserted further that; she has demonstrated sufficient cause including prompt action on filing an application for extension of time on this matter.

In reply, the 1st respondent opened her submission by stating that it is a trite law that in order for an applicant to succeed to persuade the Court to exercise its discretion to enlarge time to file an appeal, he or she must convince the Court that there were strong reasons that prevented him or her from filing the same on time.

She further stated that, the applicant herein exercised extremely negligence not to make follow up in order to assure herself that the appeal has been filed. The applicant neither exhibited any document which shows that she had an agreement with the 2nd respondent to file a joint petition of appeal on

her behalf nor any affidavit sworn by the 2nd respondent. She challenged the applicant's submission by stating that, the record shows that the judgment of the trial Tribunal was pronounced in January, 2023 and the time for appeal lapsed on 4th March, 2023. Land Appeal No. 37 of 2023 was scheduled for first mention on 4th April, 2023, yet the applicant narrated that the case was first scheduled on the 3rd August, 2023 for mention and she filed the instant Application in August, 2023. To cement her submission, the 1st respondent cited the case of **Ilimu Shija Vs. Shingisha Madukwa (Civil Appeal 310 of 2017) [2022] TZCA 171 (1 April 2022)**, where the CAT held inter-alia that:

"Delay should not be inordinate the applicant must show diligence and not sloppiness in the prosecution of the action that he intends to take".

It was the 1st respondent's averment that, the applicant took too long to institute the present application and further that she also failed to account for each day for her delay to file an appeal on time. To fortify her contention, she made reference to the case of **Jailos Mahali Vs. Furahinhahaye and Another**, Misc. Land Application No. 80 of 2020, HCT at Mbeya, wherein the Court had the following to state: -

"The absence of sufficient reasons and the fact that the Applicant has not counted for each day for his delay, such

duration is a long time for this court to grant extension of time".

With regard to the alleged illegalities in the judgment of the trial Tribunal that it was improperly constituted, the 1st respondent was of the view that, the trial Tribunal wasn't properly composed as per section 23 (1) and (2) of the Land Disputes Courts Act (supra). At the commencement of the proceeding, the trial Tribunal was composed with one Chairperson namely, Mogasa and two assessors as per section 23 (1) and (2) of the LCDA (supra). However, during continuation of the hearing, he addressed the parties why one of the assessors was absent and stated the reasons to be sickness and both parties agreed to proceed with the hearing in absence of the said assessor the absence of one of the assessors due to the reasons of sickness and both parties agreed to continue with the hearing in absent of one assessor. She stated that, in law it is acceptable under section 23 (3) of the Land Disputes Court Acts [CAP. 216 R.E. 2019], which provides that:

"Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence"

It was the 1st respondent's submission that, based on the authorities cited herein above, arguments, reasons and cumulative effect of all, this application is totally without any merits and therefore she prays the Court to dismiss the application with costs.

Having summarized and fully considered the submissions from both parties, and upon considering the parties' pleadings, the only question before me is whether the applicant has shown sufficient cause for delay to warrant this Court grant the prayers sought in the circumstance of this application. It is a principle of law that, it is discretion of the Court to grant application for extension of time upon good cause being shown. That is the spirit of section 14 (1) of the Law of Limitation Act [CAP. 89 R. E. 2019] which 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".

From the wording of the above provision of the law, there is no universal definition of what amounts to good cause. In the case of **Tanga Cement Co. Ltd Vs. Jumanne D. Masangwa & Another (Civil Application 6 of 2001) [2004] TZCA 45 (8 April 2004)** (Extracted from www.tanzlii.org), the Court

of Appeal of Tanzania speaking through (Nsekela J.A., as he then was), observed that:

"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 valid explanation for delay, lack of diligence on the part of the applicant".

In another case of **Felix Tumbo Kisima Vs. TTCL and Another**, Civil Application No. 1 of 1997 (unreported), the Court held among other things that:

"It should be observed that sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step.

Flowing from the above precedents, the Court has developed a number of factors to be considered and taken into account in the course of determining an application for extension of time. For instance, in **Lyamuya Construction Co. Ltd Vs. Board of Registered of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 (3 October**

2011) (Extracted from www.tanzlii.org), the CAT underscored and principled that: -

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

Based on the above governing principles, normally, Courts have been considering the circumstances of each case and satisfy itself if the applicant has advanced sufficient cause for delay or otherwise for it to grant or refuse granting the orders sought by the applicant.

Coming to the matter under consideration, the reasons for delay is that, the applicant was misled by the 2nd respondent that he will file a joint appeal. The reason which was strongly disputed by the 1st respondent to be sufficient or good reason for extension of time in the circumstance of this case and stated further that there was no any material or evidence to support her allegation.

As regards to the reasons for delay, it is undeniable fact that the applicant was aware of the judgement date and very much aware of its implication. It is on record that, the 2nd respondent herein filed his appeal timely, and there was no any material or evidence from the applicant to support her allegation that

she relied on the 2nd respondent promise that he will file a joint appeal, be it an agreement or contract. In absence of such evidence there is nowhere this Court can rely to grant the prayer sought. As to the case cited by the applicant, **Hodi (Hotel Management) Company Limited Vs. Richard Nkomo** (supra), the same should be differentiated in a sense that, in the present case there was no advocate involved and thus it was the duty of the applicant to make follow up of his or her case.

The applicant herein exercised extremely negligence not to make follow up in order to assure herself that the same has been filed. The fact adduced by the applicant that the delay was caused by the respondent, in my view, is an afterthought and made up to cover up her negligence.

Further, being parties in the same suit doesn't necessitate that the aggrieved parties should file a joint appeal, each party has the duty, if aggrieved to take the necessary steps to set the appeal process in motion. Failure and negligence on the part of the applicant to make follow up and do the necessity to safeguard his rights can't be put to the 2nd respondent.

On the issue of accounting for each day of delay, the applicant and the 2nd respondent were parties in Land Application No. 5 of 2019, the decision of the said Application was delivered on 19/01/2023, and that for purposes of filing an appeal to this Court the time lapsed on 4/3/2023. The applicant claimed in her affidavit that the 2nd respondent made her believe that he will file a joint appeal, first the applicant had the duty to make sure that the appeal is filed within time,

that is, before or on 4/3/2023. The applicant lodged this application on 16/08/2023 after she had found out that she was not a party to Civil Appeal No. 37 of 2023 on 3/8/2023. From 19/01/2023 to 03/08/2023 when she became aware of the Land Appeal No. 37 of 2023 is the total of 196 days which the applicant has to account for.

In the circumstance, the applicant was legally required to account for each single day of delay to convince the Court that she did not act negligently or sloppiness. To cement this position, I am guided by plethora of authorities of this Court and the CAT which held that failure by the applicant to account for each day of delay will not trigger the Court to grant for the extension of time sought. See: **Sebastian Ndaula Vs. Grace Rwamafa** (Legal personal representative of Joshua Rwamafa), Civil Appeal No. 4 of 2014, Court of Appeal), **Tanzania Coffee Board Vs. Rombo Millers Ltd**, Civil Application No. 13 of 2015, Court of Appeal, **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (All unreported), to mention a few. In **Bushiri Hassan' case** for instance, the Court insisted on the need for the applicant seeking an extension of time to account for each and every day of delay where it stated 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."

From the above discussion, clearly the applicant has failed to account for all days until she came in the doors of this Court to file the instant application.

Coming to the 2nd ground of illegality, the applicant pegged her complaint on violation of section 23 (1) and (2) of the LDCA. For ease of reference, clarity and better understanding of the provision of the law, I find it apt to reproduce as hereunder: -

1. The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.

2. The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.

Illegality as one of the reasons for extension of time, had been a subject of discussion in a number of authorities of this Court and the Court of Appeal of Tanzania. **See: The Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambhia [1992] TLR 387** and **Lyamuya Construction Co. Ltd** (supra). In the latter case, the CAT had the following to state:

"The Court... emphasized that such point of law, must be that of "sufficient importance" and I would add that it must also be apparent on the face of the record, such as the

question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

Also, in the case of **Charles Richard Kombe vs. Kinondoni Municipal Council**, Civil Reference no. 13 of 2019 (unreported), after defining the word illegality, the Court went on stating that: -

"From the above decisions, it is our conclusion that for a decision to be attacked on ground of illegality, one has to

successfully argue that the court acted illegally for want of jurisdiction or for denial of right to be heard or that the matter was time barred".

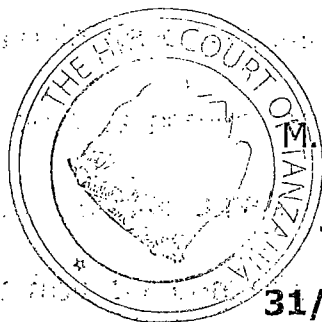
Regarding the issue of illegality as presented by the applicant, my holding is that, upon perusing the records of the DLHT for Morogoro via Madai No. 5 of 2019 wherein the 1st respondent stood as the applicant and the applicant herein together with the 2nd respondent herein (and other two persons who are not party to this application), stood as the respondents, and further upon considering deeply the origin of this matter sprang from an immovable property, a house that was sold by the 2nd respondent herein to the applicant herein and some of the monies were transferred into the Bank Account owned by the 1st respondent herein (TZS.11,138,000/=), I have spotted existence of a point of law of sufficient importance on the records of the trial DLHT to warrant this Court exercise its discretionary powers to grant the orders sought by the

applicant for enlargement of time so that she can apply before this Court to be joined as a party in Land Appeal No. 37 of 2023.

In my considered view, if the dispute will be left unattended conclusively, may escalate their feuds and tensions among the parties to this application and Land Appeal No. 37 of 2023 which is before this Court (Ext. Jurisdiction) and perhaps will amount to an endless litigation.

For the above reasons, and for the ends of justice, it is my holding that this application should be considered positively. Accordingly, I proceed to grant extension of time as prayed by the applicant so that she may actualize her intention to be joined as a party in Land Appeal No. 37 of 2023 within twenty-one (21) days from the date of this ruling. **It is so ordered.**

DATED at **MOROGORO** this 31st day of October, 2023.



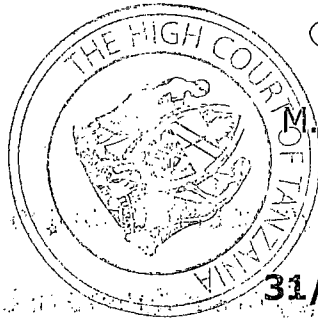
M. J. Chaba

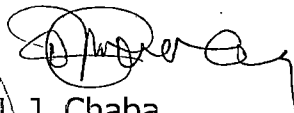
Judge

31/10/2023

Court:

Ruling delivered under my hand and Seal of the Court this 31st day of October, 2023 in Chamber's in the presence of the Applicant and 1st Respondent both appeared in persons, and unrepresented and in the absence of the 2nd Respondent.



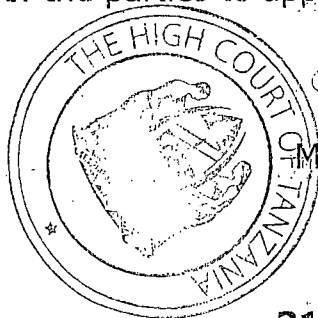

M. J. Chaba

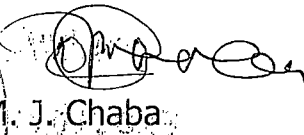
Judge

31/10/2023

Court:

Right of the parties to appeal to the CAT fully explained.




M. J. Chaba

Judge

31/10/2023