

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 9 OF 2022

(C/F Land Application No. 427 of 2021 in the District Land and Housing Tribunal for Arusha at Arusha, Land Appeal No. 28 of 2021 in the District Land and Housing Tribunal for Arusha at Arusha, Originating from Land Application No. 03 of 2020)

UNAMBWE T. SUMARI.....APPELLANT

VERSUS

DEVIS M. KIMAMBO.....RESPONDENT

JUDGMENT

23/10/2023 & 06/12/2023

GWAE, J

Dissatisfied by the decision of the District Land and Housing Tribunal for Arusha at Arusha, the appellant has filed this appeal with the following grounds;

1. That, the tribunal erred in law and in fact in holding that the appellant did not account for the days of delay from 9th December 2021 to 19th December 2021 completely disregarding the time spent in preparing the application for extension of time which was well elucidated during hearing.
2. That, the tribunal erred in law and in fact, for not considering that it was the tribunal's fault that the appellant was unable to

lodge his application within time due to technical failure in obtaining the control number.

3. That, the tribunal erred in law and in fact for not considering that the appellant acted promptly in lodging the application for extension of time i.e 10 days' delay is not inordinate.
4. That, the tribunal erred in law and fact for accounting for days which were spent by the tribunal in vetting applications before being admitted which ought to have taken judicial notice.

Essentially, in the Mbuguni Ward Tribunal ("trial tribunal"), the respondent herein through his representative Ainess Gadson Sumari successfully filed a suit against the appellant claiming trespass to his land measuring 35 x 70 located at Kikuletwa in Mbuguni Ward. It was the finding of the tribunal that, the respondent was legally given the land in dispute by his grandmother Ndekunyiswa Swai (now deceased) and therefore he was the lawfully owner. The decision of the Mbuguni Ward Tribunal was followed with an application for execution (Application No. 273 of 2021). Nevertheless, on 08/12/2022 the application was dismissed for non-appearance of the decree holder. Later on 20/04/2021 the appellant herein filed an appeal to the District Land and Housing Tribunal for Arusha at Arusha challenging the decision of the trial tribunal which

was also dismissed for want of appearance. Still persistence to file his appeal, the appellant filed an application for extension of time to file an application to set aside the dismissal order. Unfortunately, the application was dismissed for lack of merit as the appellant failed to advance sufficient reasons for the tribunal to extend time and hence this appeal.

When the appeal was called on for hearing, the appellant was represented by the learned counsel **Mr. Elibariki Maeda**, the respondent on the other hand enjoyed legal services from advocate **Veneranda Joseph**. With leave of the court, the appeal was disposed by way of written submissions.

Submitting on the 1st and 4th ground of appeal, the learned counsel submitted that the appellant at the time of filing an application to set aside the dismissal order (08/12/2021) he encountered a technical obstacle where he could not be able to get the control number. The appellant thus wrote a letter to the tribunal explaining the predicament. Nevertheless, on 16th December 2021 the applicant filed an application for extension of time which was just eight (8) days after the appellant had failed to obtain the control number. According to him the delay of eight (8) days is not inordinate and in fact it was the counsel observation that the appellant having noted that he is out of time acted promptly and

diligently in lodging the said application. As far as the delay from 16th December to 20th December 2021 is concerned, Mr. Maeda submitted that it was beyond the control of the appellant on the reason that at that time the appellant had already filed his application to the tribunal and the same was waiting for a control number.

Coming to the second ground of appeal, it was the submission of Mr. Maeda that, the tribunal in making its finding, failed to consider the fact that, the delay which caused the appellant to file his application was caused by the tribunal's fault in issuing him with the control number in time. The failure, which led the appellant's failure to lodge his application to set aside the dismissal order. Thus, it was his observation that the delay is a technical delay caused by the tribunal. He referred this court to the decision of the Court of Appeal of Tanzania in the case of **Fortunatus Masha vs William Shija** [1997] TLR 154. The appellant thus prayed for the court to quash and set aside the ruling of the District Land and Housing Tribunal and further extend time for the appellant to file his application out of time.

Responding to the appellant submission, the respondent strongly insisted that the appellant acted negligently in filing his application on time and that he had an ample time to do so before waiting for the

deadline. Further to that, the respondent argued that the appellant has failed to account for days of delay from 9th December 2021 to 19th December 2021. He supported his stand with the decisions of the Court of Appeal in the following cases; **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Children Association of Tanzania**, Civil Application No. 2 of 2012, **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2012 and **Eliakim Swai & another vs. Thobias Karawa Shoo**, Civil Application No. 2 of 2016 (All Reported in Tanzlil)

The respondent concluded that the application at hand has a low chance to succeed as the applicant failed to account for the days of delay, failed to show diligent and not apathy, negligence or sloppiness in the prosecution of his case and therefore it was his prayer that the application be dismissed with costs.

Having considered the rival submissions from the parties' counsel together with the record of this application, this court is called upon to determine whether the tribunal was justified to dismiss the application for extension of time.

As already stated above, this appeal originates from an application for extension of time filed by the appellant at the District Land and

Housing tribunal where he sought for enlargement of time to file an application to set aside the dismissal order out of time. I need not to repeat the sequence of events that transpired as the same has already been stated above save for the observations made by this court in the proceedings of the tribunal.

It is the observation of this court that on 08/12/2021 the appellant wrote a letter to the tribunal addressing it on the network problem to obtain the control number so as to allow him to pay the filing fee. On the last paragraph of the said letter, the appellant prayed for extension of time to make payment of the court filing fee soon as the network problem was resolved. The letter had the seal of the tribunal showing that the same was received by the tribunal on 8th December 2021. Nevertheless, there is no record on the response of the tribunal to the appellant's letter extending time to pay the court fee. Consequently, on 16th December 2021 the appellant filed an application for extension of time to file an application to set aside the dismissal order. According to the receipt, the application of extension of time was paid on 20th December 2021. In his application, the appellant among other reasons, he stated that although his application was admitted on the same date, but he could not get the control number to make payment of the filing fees as there was network

problem. He went further to state that he wrote a letter explaining to the tribunal the cause of the failure to file his application on 8th December 2021. From what was stated by the appellant in his application together with the letter written explaining the network problem It is the firm view of this court that failure of the appellant to file his application on time was beyond his control. It is a common ground that despite the introduction of technology in our judicial system including filing of cases online, but yet the problem of network has been at times an obstacle. On the same note, parties cannot be blamed for the error occasioned by network system as the same is beyond their control, and this is basically what is reflected in the case at hand where I hasten to state that the appellant cannot be held liable for failure to file his application on time.

In refusing to grant the application, the chairperson of the tribunal was of the view that the appellant the appellant delay to file his application for extension of time was not eight (8) days as stated by the appellant but 12 days on the reason that the receipt evidenced that payment was made on 20th December 2021.

It is also my observation that, payment of the court filing fees was done on 20th December 2021 and since it is a principle that admission of a document is effected on the date of payment of court fees then the

applicant's application was filed on 20th December 2021 and not 16th December 2021 as reflected in the admission seal of the tribunal. Well I do not disagree with this principle but I have considered the submission of the appellant and I find it worth that he submitted his application for admission to the tribunal on 16th December 2021 and that up to 20th December 2021, the document for filing was with the tribunal for admission process. Similarly, it is noted that on 20th December 2021 is when the appellant was issued with the control number and made the payment. In that regard the appellant's delay to my firm view is of 8 days to which I find it justifiable on the reason that, the appellant having found that he is out of time he had to make other arrangements in filing the application for extension of time.

I am of the position of law that it is the discretion of the court to extend time where good and sufficient cause has been established by the applicant. In the case of **Wambura N.J. Waryuba vs. The Principal Secretary, Ministry for Finance & another**, Civil Application No. 320/01 of 2020 it was held;

"...it is essential to reiterate here that the court's power for extending time...is both wide-ranging and discretionary but it is exercisable upon cause being shown."

Moreover, in the case of **Royal Insurance Tanzania Limited Vs. Kiwengwa Strand Hotel Limited**, Civil Application No. 166 of 2008 (Unreported) it was also stated that:

"It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith."

In that regard this court is satisfied that, the appellant's delay was beyond his control and thus justifiable. Moreover, I have also considered the delay of 8 days, which to my opinion is not inordinate to refuse to grant the appellant's application.

The above said, this appeal succeeds as explained above, the appellant is allowed to file his application to set aside the dismissal order in the District Land and Housing Tribunal for Arusha at Arusha (DLHT) within **fourteen (14)** days from the date of delivering of this Judgment.

It is so ordered

DATED at DAR ES SALAAM this 9th December 2023




MOHAMED R. GWAE
JUDGE