

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MOSHI SUB-REGISTRY
AT MOSHI

MISCELLANEOUS LAND CASE APPLICATION NO. 33 OF 2023

(C/F Misc. Land Application No. 17/2023 and Land Appeal No. 11/2022 in the High Court of Tanzania at Moshi; Land Appeal No. 08 of 2022 in the District Land and Housing Tribunal of Moshi at Moshi and; Originating from Shauri la Madai ya Ardhi No. 13/2020, Baraza la Kata Kahe Magharibi)

DANIEL RALFU..... APPLICANT

VERSUS

BRYSON SAUL.....RESPONDENT

RULING

Date of Last Order: 16.04.2024
Date of Ruling : 07.05.2024

MONGELLA, J.

The applicant herein has preferred this application under **Section 11(1) of the Appellate Jurisdiction Act** [Cap 141 R.E 2019]. He is seeking for enlargement of time to apply for leave to appeal and for certificate of point of law so that he could file his appeal in the Court of Appeal. He wishes to challenge a judgement of this court in Land Appeal No. 11 of 2022. His application is taken at his instance and supported by his own sworn affidavit. The respondent contested the application and duly filed his own sworn counter affidavit to that effect.

The brief facts of the application as drawn from the applicant's affidavit are that: The applicant was sued at Kahe Magharibi Ward

vide *Shauri la Madai ya Ardhi Na. 13 of 2020* over 2 acres of land located at Ngasinyi B. Kahe within Dehu Hamlet. A judgement issued on 21.12.2021 declared the respondent the lawful owner of the suit land. Aggrieved, the applicant filed Land Appeal No.08 of 2022 in the District Land and Housing Tribunal, which was dismissed. He then filed Land Appeal No. 11 of 2022 before this court which was also dismissed on 03.04.2023.

Aggrieved by the decision of this court, he lodged his Notice of Appeal to the Court of Appeal on 14.04.2023. The applicant then sought for leave to appeal to the Court of Appeal vide Misc. Land Application No. 17 of 2023. He however realised that he was to seek for certificate on point of law as well. This led him to withdraw the application for leave. Seeing that he was out of time to file an application for leave and certificate of point on law, he filed the application at hand seeking for enlargement of time.

The application was argued by written submissions for interest to both parties who stood unrepresented.

Prior to his submission, the appellant requested to abandon his request for enlargement of time in respect of his prayer for leave to appeal. He thus maintained his prayer for enlargement of time to file an application for certificate on point of law.

Apart from praying for adoption of the contents of his supporting affidavit, the applicant's main reason for being granted enlargement of time based on technical delay. Expounding on this, he claimed that most of the time was wasted in pursuing Misc.

Application No. 17 of 2023 which was withdrawn on 13.07.2023. He alleged that from 13.07.2023 up to the date he filed this application, he was seeking legal advice which led him into failure to prefer a proper application. Insisting on being granted enlargement of time, he contended that there are clear grounds based on points of law under which he endeavours to challenge the decision of this court in the Court of Appeal. In the foregoing, he finalized his submissions by praying for the application to be allowed.

The application did not go unopposed. In his reply submission, the respondent pointed out that the grant of enlargement of time is within the discretion of the court, which must be exercised judiciously on proper analysis of facts and law. Referring to what transpired in the lower tribunals, he contended that the records of the lower tribunals reveal that the applicant was presented in court when the ruling and judgement were delivered. In that respect, he considered the appellant's delay being deliberate. He further challenged the appellant for failure to submit some materials so this court for it to exercise its discretion.

In addition, he urged the court not to allow the enlargement of time to appeal applied for on the ground that the applicant's delay is inexcusably long. He had the view that if the same is allowed it would cause injustice to him. Arguing further, he averred that the applicant failed to convince this court as to why he was out of time. Considering the appellant's argument that he has sound grounds of appeal, he challenged that the applicant's appeal is not

arguable as he failed to prove his assertions before the lower tribunals and before this court.

He further challenged the applicant for not stating any reason why he failed to file the notice of appeal in time. In his view, the applicant lacks justification on what prevented him from instructing his legal adviser or advocate to file the application in time. That, the applicant lacked diligence in pursuing his intended appeal.

In addition, he contended that the applicant ought to have known the rules of procedure. In that respect, he found the applicant's arguments vexatious and frivolous deserving to be dismissed by this court. Citing the case of **Andrew Bamanya vs. Shamsherali Zaver**, S.C Civil Application No. 70 of 2001 (unreported) he argued further that mistakes, faults, lapses or dilatory conduct of the counsel or the applicant should not be allowed. Viewing the delay unjustified, he prayed for the application to be dismissed with costs bearing the inconvenience caused to him.

Rejoining, the applicant alleged that he has adduced sufficient reasons for this court to exercise its discretion to enlarge time. He considered the trial tribunal decision tainted with a huge irregularity as the trial tribunal gave a judgement while the amendments introduced stripped it of such powers.

He contended that the respondent would not suffer any injustice if enlargement of time is granted. In his view, granting the same would be an opportunity for the Court of Appeal to address the irregularity that was not recognized by the appellate tribunal and

this court. He further challenged the case cited by the respondent on the ground that the issues stipulated therein on mistakes, faults, lapses or dilatory conduct of counsel do not apply to his case.

The applicant finalized his submission by stating that if the decision of the ward tribunal as well as the appellate tribunal and that of this court are left unchallenged, it would occasion injustice to him. He thus reiterated his prayer for the application to be granted.

I have considered the submissions by both parties. It is well settled that granting extension of time is within the discretion of the court which however, has to be exercised judicially. In exercising such discretion, the court observes various criteria to satisfy itself whether the applicant has demonstrated good cause for the delay. These criteria were well provided in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 TANZLII whereby the Court stated:

“As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -

- (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.”

Basically, the applicant has pleaded three reasons to justify his delay and grant of extension of time: **one**, technical delay being the time he spent in executing Land Application No. 33 of 2023; **two**, time spent in preparing to file this application and; **three**, presence of an irregularity in the ward tribunal's decision. On the other hand, the respondent contended that the applicant did not advance sufficient reasons for his delay. However, discerning from his submission, it seems the respondent talked of enlargement of time to file an appeal, a matter not before this court.

Concerning technical delay, the applicant sought for the time he spent prosecuting Land Application No. 17 of 2023 to be excluded. Technical delay is meant to cover the period the applicant preferred a matter that is struck out for being incompetent for some technical reason. This was well expounded in **Fortunatus Masha vs William Shija and Another** (supra) whereby the Court stated:

“A distinction has to be drawn between cases involving real or actual delays and those such as the present one in 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 pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted."

See also; **Philemon Mang'ehe t/a Bukine Raders vs. Gesso Herbon Bajuta** (Misc. Civil Application No. 374/02 of 2022) [2023] TZCA 17672 (29 September 2023).

According to his pleadings and submission the applicant withdrew Miscellaneous Land Application No. 17 of 2023 on 13.07.2023. He however, neither indicated the date the said application was filed nor attached the relevant order. Nevertheless, such time when the matter was in court is covered under technical delay.

On the other hand, however, the application at hand was filed on 26.07.2023, which was 13 days after the applicant withdrew his initial application. He has alleged that he was seeking legal advice as to which application he ought to file. However, even in his search for legal advice he has not accounted for each day of delay as required. He ought to have explained what he was doing each day in his search for the alleged legal advice. In **Board of Trustees of The Free Pentecostal Church of Tanzania vs. Asha Selemani Chambada and Another** (Civil Application 63 of 2023) [2023] TZCA 147 TANZLII the Court of Appeal again emphasized this requirement. It stated:

"...as we have held in our numerous decisions, a delay of even a single day must be accounted for to enable the Court exercise its discretion in the applicant's favour."

See also, **Rosemary Katunzi vs. Oscar Mhagama & Another** (Civil Application No. 43/17 of 2022) [2023] TZCA 17556; **Hassan Bushiri vs. Latifa Lukio Mashayo**, Civil Application No. 39 of 2007 and; **Wambura N J, Waryoba vs. The PS Ministry of Finance & Another** (Civil Application No. 320/01 of 2020) [2021] TZCA 457 TANZLII.

Further, I find it in doubt whether he really needed further legal advice. This is in consideration of the fact that he indicated under paragraph 8 of his supporting affidavit that he discovered via legal advice given to him that he also ought to seek for certificate on point of law. He stated:

“8. That as a matter of law and upon being given legal advice the applicant came to realize that he was also supposed to apply for certification on point of law since the dispute emanates from the Ward Tribunal.”

This means the applicant was already aware of the error he had made and wanted to rectify it. In fact, the above quoted paragraph indicates that the applicant had the idea to seek both leave to appeal and certificate on point of law, which is exactly what he prayed for in his chamber summons. In the foregoing, he ought to have accounted for the 13 days, but he did not.

With regard to the reason of irregularity or rather illegality in the trial tribunal's proceeding; it is settled legal position that where an illegality has been alleged on a decision sought to be challenged, the court ought to grant extension of time so that the illegality is

addressed. This was well stated in **Salehe Omary Ititi vs. Nina Hassan Kimaro** (Civil Application 583 of 2021) [2023] TZCA 232 TANZLII:

“Again, it is a settled principle of law in our jurisdiction that where an illegality in the decision being challenged is raised, the Court is supposed to grant the application for extension of time so that the matter can be considered.”

See also **Principal Secretary, Ministry of Defence and National Service vs. Devram P. Valambhia** [1992] T.L.R. 185. The conditions to be observed is that the alleged illegality must be of sufficient importance and apparent on the face of record and not one to be found after long drawn arguments. This was well explained in **Lyamuya Construction** (supra) whereby the Court of Appeal held:

“...it cannot in my view, be said that in VALAMBHIA's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right, be granted extension of time if he applies for one. The Court there 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.”

Pointing the asserted illegality, the applicant alleged that the trial tribunal lacked jurisdiction in that it drafted a judgement when amendments stripped off its powers to do so. The applicant

however, did not explain when did the alleged come into place and when was the trial tribunal judgement issued for this court to see if the trial tribunal was indeed stripped of its jurisdiction. He never gave such details in his supporting affidavit or his submission. In fact, he reiterated this point not in his submission in chief, but in his rejoinder submission, which deprived the respondent the chance to reply. He as well did not attach the said decision in his application for this court to see the dates. In the circumstances, this court cannot deliberate as to whether the alleged illegality has met the criteria under the law for grant of extension of time.

In the foregoing observation, it is my view that the applicant has failed to demonstrate sufficient cause for tis court to enlarge time for him to file his application for certificate on point of law. The application is therefore dismissed with costs.

Dated and delivered at Moshi on this 07th day of May, 2024.



X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA