

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA SUB-REGISTRY)**

**AT ARUSHA**

**MISCELLANEOUS LAND APPLICATION NO.126 OF 2023**

***(Arising from Land Application No. 37 of 2019, District land and  
Housing Tribunal for Karatu at Karatu)***

**ABEL LOHAY SLAA.....APPLICANT**

**VERSUS**

**SIMON JOHN QUWANGA .....1<sup>ST</sup> RESPONDENT**

**DEOGRATIUS KISENGE.....2<sup>ND</sup> RESPONDENT**

**RULING**

**25/04/ & 28/05/2024**

**KIWONDE, J.:**

The applicant Abel Lohay Slaa filed an application by way of chamber summons supported by an affidavit praying for the following court orders:

- (a) That, this honourable court be pleased to extend time for the applicant to file appeal against the judgment and decree in Application No. 37 of 2019 District Land and Housing Tribunal for Karatu out of time.

(b) Any other relief (s) this honourable court may deem fit and just to grant.

The respondents were served, however, only the 1<sup>st</sup> respondent filed counter affidavit refuting some facts deponed by the applicant; the 2<sup>nd</sup> respondent did not file counter affidavit and so, the matter proceeded *ex parte* against him.

On 14/03/2024 it was agreed by the parties and ordered by this court that the application be argued by way of filing written submissions and they filed them.

In his submissions in-chief, the applicant argued that the decision of the trial tribunal was handed down on 27<sup>th</sup> September 2022. According to the applicant, the reasons for delay include delayed supply of necessary documents like copies of judgment for his action but they were withheld by the tribunal until 3<sup>rd</sup> October 2023.

Apart from that, the applicant said upon receipt of the documents, he filed an application for extension of time, Miscellaneous Land Application No. 176 of 2022 which was struck out on 25<sup>th</sup> August 2023 hence the present application. He said he did not sleep over his rights. He said he was prevented by some matters including financial constraints.

The applicant asserted illegality in the decision of the trial tribunal that he was deprived of his right to be heard.

The applicant cited some case laws which I find not necessary to repeat them here.

In reply, the 1<sup>st</sup> respondent resisted the application on reason that financial hardship has never been a good cause for extension of time and it is not proved.

As to illegality, the 1<sup>st</sup> respondent argued that not every allegation of illegality can be relied to grant extension of time. There are some decisions referred but I will not reproduce them.

In rejoinder submissions, the applicant reiterated what was submitted in-chief.

From the pleadings and written submissions, the main issue for determination is whether sufficient cause has been shown for the court to issue an order extending time for the applicant to lodge an appeal out of time.

In law, the court can extend time within which the applicants can file notice of appeal out of time if they establish sufficient or good cause for

their delay. The aspect of good cause depends on the circumstances of each case.

However, the factors which the court takes into consideration before granting order extending time include; **one**, length of time of delay, **two**, reason for delay, **three**, if the applicants were not diligent to pursue their rights, **four**, whether grant of the order extending period of filing notice of appeal will prejudice the respondent and **five**, if the applicants can account for each day of delay, **six**, whether there is arguable case, such as a point of law or illegality apparent on the face of record.

This was a position in **Mohamed Salum Nahdi Versus Elizabeth Jeremiah**, Civil Application No. 474/01 of 2016 and **Wambele Mtumwa Shahame Versus Mohamed Hamis**, Civil Reference No.8 of 2016, Court of Appeal of Tanzania at Dares Salaam (both unreported).

In the application at hand, the applicant delayed to file appeal to the due to delayed supply of the necessary documents including the tribunal judgment and orders for his proper legal action. They were given to him on 3<sup>rd</sup> October 2023.

That is not enough, the applicant filed and prosecuted an incompetent application in this court which later on was struck out on technical ground.

Thus, this contributed to his delay to appeal within time. The technical

delay has been held among the ground for granting an order extending time since the period spent by the party in court corridors prosecuting null application has to be excluded in computing time of delay. This was a position in **Geita Gold Mines Limited Versus Anthony Karangwa**, Civil Appeal No.42 of 2020 [2023] TZCA 28 (20<sup>th</sup> February 2023) TanzLii.

Apart from that, the applicant alleged illegality on the decision of the trial tribunal that he was deprived of his right to be heard. This is a fundamental. The applicant has an arguable point of law which need to be determined on appeal. Where illegality is raised, it is among the reason for extending time. In **Stephen B. K. Mhauka Versus The District Executive Director Morogoro District Council and 2 others**, Civil Application No.68 of 2019, Court of Appeal of Tanzania at Dar-es salaam (unreported) it was categorically stated that illegality which is apparent on the face of record is a good ground for allowing application for extension of time however long period of delay may be.

Based on the reasons of technical delay and illegality, I find the applicant has shown sufficient cause for the grant of order extending time within which he can file appeal out of time.

As a result, I find and hold that the application finds merits. It is hereby allowed. The applicant is availed with fourteen (14) days from the date of this ruling to lodge the intended appeal.

It is so ordered.

**Dated at Arusha** this 28<sup>th</sup> May 2024.



  
**F. H. KIWONDE**  
**JUDGE**  
**28/05/2024.**