

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB- REGISTRY

AT ARUSHA

MISC. LAND APPLICATION NO. 146 OF 2022

(Arising from Misc. Application No. 151 of 2021 at the District Land and Housing Tribunal of Manyara at Babati.)

**ELIA MICHAEL SHINGAEDA (Suing as the next friend of
GIDABUNARY GASHARI) _____ APPLICANT**

Versus

**JUMA RAJAB OMARI (Suing as an administrator of the estate of the late
RAJABU OMARI ESSIA _____ RESPONDENT**

RULING

25/01/2024 & 05/04/2024

BADE, J.

This is an Application for the grant of an order for an extension of time within which the Applicant can file an Appeal against the Ruling in Misc. Application No. 151 of 2020 from the District Land & Housing Tribunal of Manyara at Babati, delivered on 09/02/2022. The Application is made under the provisions of Section 41 (2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and Section 14 (1) of the Law of Limitation Act, [CAP

89 R.E 2019] through a chamber summons supported by the Applicant's affidavit.

The Applicant's affidavit has canvassed various facts in support of the Application explaining the reasons for seeking an extension of time.

To give context to the application, I revisited the facts of the case albeit briefly. It seems that the Respondent sued the Applicant at the District Land and Housing Tribunal of Manyara at Babati, through Application No. 77 of 2014 but the Applicant did not enter appearance to defend his case. As a result, an *ex-parte* judgment was entered against him on 26/08/2016. He made an application to set aside that *ex-parte* judgment on the reason that the one who was supposed to appear and defend the case, Gidabunary Gashari was of unsound mind since 2005. The Chairperson of the tribunal did not buy his story and decided to dismiss his Application with cost. He was aggrieved and appealed against that decision through Land Appeal No. 30 of 2022. His Appeal did not sail through and it was struck out with cost on 05/10/2022, hence the instant Application.

This Application is disposed of by way of written submissions after parties obtain leave of the court to do so. The Applicant was represented by Mr. Emmanuel Sood, learned Advocate while the Respondent appeared in

person unrepresented. Advocate Joseph Moses Oleshangay helped to draft the Respondent's submission.

Mr. Sood adopted the contents of the Applicant's amended affidavit and chamber summons to form part of his submission. Submitting for the Application, he explained that the Ruling that the Applicant is seeking to challenge was delivered on 09/02/2022. That the petition of the appeal to wit, Land Appeal No. 30 of 2022 was timely filed before this Court on 05/04/2022. Mr. Sood further submitted that Appeal No. 30 of 2022 was struck out and the Applicant could not file another Appeal without first seeking for an extension of time.

Moreover, Mr. Sood submitted that with respect to the computation of time, the Applicant was late in filing the Appeal, from the date on which the Ruling of the DLHT was delivered which is 09/02/2022. The date of filing the petition of appeal which was struck out is 05/04/2022. The Ruling to struck out the Appeal was delivered on 05/10/2022, while the date in which the instant Application was filed is 10/10/2022 so the period of lateness is approximately 17 months.

It is Mr. Sood's contention that the Applicant will show how he accounted for the 17 months of delay starting with how the Applicant first lodged his Appeal on time, but due to technicalities his Appeal was struck out, and

within the next 5 days the Applicant filed the current Application i.e. on 10/10/2022. The counsel is adamant that from the said date this Application is pending before this Court. Mr. Sood contended that 17 months that the Applicant is late have all been spent in court for some reasons and such delay is what termed by the higher Court as technical delay as it may be distinguished from real delay. To cement his position, he cited the case of **Bank of Baroda (Tanzania) Limited & Mr. Charles Rwechungura vs Pulses Yargo Commodities (Tanzania) Limited**, Civil Application No. 128/02 of 2018. The counsel for the Applicant in further argument contended that the second factor to prove is that the delay was not inordinate, and maintained that this factor is proved by the explanation that is already given, that the delay was technical. Mr. Sood further submitted that the facts are crystal clear that there is nowhere the Applicant was negligent in taking the requisite steps. He argues that the only default which led the Appeal to be struck out was caused by the Applicant's counsel who had earlier the conduct of the matter, and the law of our land is clear that a party cannot be punished for the negligence of his advocate.

In an argument that seems to be taken in the alternative, he argues that even if the same will be taken as negligence, there are situations where

the court can grant extension of time in exception. To support his position, he cited the case of **Akonaay Sidawe vs Lonay Baran**, Civil Application No. 25/02 of 2016 as the Court of Appeal quoted the case of **Felix Tumbo Kisima vs TTCL Limited & Another**, Civil Application No. 1 of 1997 (unreported) where it was held that, there are times, depending on the overall circumstances surrounding the case where extension of time may be granted even where there is some element of negligence by the applicant's advocate.

Opposing the Application, Mr. Oleshangay prayed the court to adopt Respondent's amended counter affidavit to form part of his submission. He submitted that Applicant failed to file his Appeal within the prescribed period of time as per the law without stating good reasons for the delay. It is Mr. Oleshangay's contention that on the issue of technicalities the Applicant and his advocate have a duty to conduct their case diligently and failure to check the law properly is an inexcusable negligence. He maintains that despite the Appellant's advocate admitting 5 days delay, he has not accounted for the days of delay from 05/04/2022 to 10/04/2022.

Moreover, Mr. Oleshangay submitted that the decision to grant an extension of time is within the court's discretion, but such discretion

should be exercised judiciously depending on the circumstance of each case subject to the good or sufficient cause given by the Applicant. To support his position, he cited the case of **Mahamudi Ally vs Oliver Daniel (Administrator of the Estate of the late Daniel Manywili) and 3 Others**, Misc. Civil Application No. 96 of 2021. He explains that the case of **Lyamuya Construction Company Ltd vs Board of Registered of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (unreported) elaborates some key principles/conditions for an application of extension of time to be granted which includes, one, that the applicant must account for each day of delay, two, the delay should not be inordinate, three, the applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intend to take, and four, if the court feels there are other sufficient reasons such as the existence of point of law of sufficient importance such as illegality of the decision sought to be challenged.

Expounding, the Respondent's counsel maintained that the Applicant has failed to account every day of delay in the filing this Application insisting that the delay must have been with negligence or sloppiness. Mr. Oleshangay insisted that the Applicant has not complied with the law in

accounting every single day of delay, what he did is to list in blanket form all the date which he delayed in filing this Application. To buttress his position, he cited the case of **Sebastian Ndaula vs Grace Rwamafa**, Civil Application No. 4 of 2014 (unreported).

Moreover, the counsel submitted that a mistake done by an advocate through negligence or lack of diligence cannot constitute a ground for condonation of delay, citing in support of this position the case of **Yusuph Same and Another vs Hadija Yusuph**, Civil Appeal No.1 of 2002 (unreported).

He contended that the circumstances leading to delay are clearly unjustifiable and without a good cause, essentially when the Applicant stated that he was unable to lodge the Appeal because the advocate who had the conduct of the matter without justifiable reasons failed to communicate with him and he did not give him feedback on the progress of the Appeal, urging this court to dismiss the Application with costs.

Having perused the filed affidavits and rival submissions by the parties, the task before me is to determine whether the Applicant has shown good cause for an extension of time to grant.

In the case of **Lyamuya Construction Co. Ltd** (supra) that has been cited by both parties, there have been established guidelines by the Court of Appeal that are to be followed while considering application for an extension of time, thus:

- (a) The applicant must account for all the period of delay.
- (b) Delay should not be inordinate.
- (c) The application 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 important reasons such as the illegality of the decision sought to be challenged.*

Similarly, in the case of **Laurent Simion Assenga vs Joseph Magoso & 2 Others**, Civil Application No. 50 of 2016, the Court of Appeal expounded further in answer to the question of a good cause and stated that what is a good cause is a question of fact, depending on the facts of each case, and for that reason, many and varied circumstances could constitute good cause in any particular case.

The Applicant's advocate submitted that the Applicant was neither negligent nor acted on sloppiness or show any apathy in the

prosecution of the action he intends to take, and rather, the delay was technical one since the Appeal that he filed on time was struck out due to the negligence of the advocate that he had engaged to have the conduct of the matter.

There is no dispute that the Ruling on Application No. 151 of 2021 which the Applicant intended to appeal against was delivered on 09/02/2022. It is also on the record that the Appellant filed an Appeal against the said Ruling on 05/04/2022 vide Land Appeal No. 30 of 2022 which was filed on time. On 05/10/2022 the said Appeal was dismissed with costs, after which he filed the instant Application on 10/10/2025. If one follows the trend above, it is without doubt that the Applicant was not sleeping on taking action to pursue his right. One can see that after his Appeal was struck out for being incompetent on 05/10/2022, on 10/10/2022 he filed the instant Application. Granted that the Court has held that negligence on the part of Counsel is not sufficient reason for extending time. See **Kiqhoma Ali Malima vs Abas Yusuf Mwingamno**, Civil Application No. 5 of 1987 and the erstwhile Court of Appeal for Eastern Africa had dealt with this aspect in the case of **Shah Hemraj Barmas and Brothers vs Santosh Kumar w/o J N Bholia**, [1961] E.A 679 at page 685, as it observed:

"The matter is one of discretion and we do not wish to lay down an invariable rule, but rules are made to be observed and where there has apparently been an excessive delay, the court requires to be satisfied that there is an adequate excuse for the delay or that the interests of justice are such as to require the indulgence of the court upon such terms as the court considers just"

I should not think by any yardstick that a delay of five days can be seriously considered as apparently excessive delay as explained above or inordinate delay as alleged by the Respondent, particularly bearing in mind that the Applicant had to find another advocate and prepare the necessary documents to lodge the present Application.

As correctly argued by Mr. Sood, this delay still can be termed technical delay as it was held in the case of **Fortunatus Masha vs William Shija and Another** [1997] TLR 154 where it was held:

".....in the circumstances, the negligence, if, any, really refers to the filing of an incompetent appeal not the delay in filing it. The filing of an incompetent appeal having been duly penalised by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal. In fact, in the present case, the applicant acted

immediately after the pronouncement of the ruling of this court striking out the first appeal.”

For the stated reason, I am satisfied that the Applicant has demonstrated a good cause for extension of time. The Application is accordingly granted. The Memorandum of Appeal has to be lodged within 30 days from the date of this Ruling. No orders as to costs.

It is so ordered.

DATED at ARUSHA this 05th day of April 2024



A. Z. Bade
Judge
05/04/2024

Ruling delivered in the presence of the Parties in chambers on the **05th** day of **April 2024**.



A. Z. BADE
JUDGE
05/04/2024