

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA SUB REGISTRY
AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 22 OF 2023

(Arising from Land Application No. 15 of 2017 of Kondo District Land and Housing Tribunal.)

MWANAHAMISI K. CHOBU..... APPLICANT

VERSUS

MAJENGO HAMISI SANDA

(Administrator of the estate of
the late Hamisi Juma Sanda) **RESPONDENT**

RULING

Date of Last Order: 2nd May 2024

Date of Ruling: 31st May 2024.

MASABO, J:-

By a chamber summons filed under section 41(2) of the Land Disputes Courts Act Cap 216 R.E 2019, leave for extension of time is sought to enable the applicant to file an appeal out of time against the decision of the District Land and Housing Tribunal for Kondo District dated 8th February 2018. Supporting the application is an affidavit deposed by the applicant, Mwanahamisi K. Chobu. The application was contested by the respondent.

In the affidavit, it is deposed that, the applicant was the applicant in Land Application No. 15 of 2017 before the District Land and Housing Tribunal of Kondo District, the trial tribunal. Disgruntled by the judgment which was in favour of the respondent, she wanted to appeal to this court but the time for filing the appeal lapsed before she lodged her appeal. Still desirous of

exercising her right, she filed Misc. Land Application No. 75 of 2021 seeking leave for an extension of time within which to file her appeal. The application was granted on 26th July 2022. The applicant was to file her intended appeal within 30 days from the date of the ruling. This order was however not complied with on the reason that she lost communication with her Advocate. Hence this application, filed on 31st March 2023.

The application was heard by way of written submissions. The submission in chief was to be filed on or by 9th April 2024, a reply on 23rd April 2024 and a rejoinder if any was to be filed on 30th April 2024. The applicant's submission was drawn and filed by Shanel Peter Richard, learned Advocate whereas the respondent's reply was drawn and filed by the respondent.

Submitting in support of the application, Ms. Richard argued that the application is based on a sole ground deponed in the applicant's affidavit and it is to the effect that, the applicant failed to communicate with her Advocate thus she was unaware that her previous application for extension of time was decided and she was granted the leave for extension of time.

In reply, the respondent opened her submission with a preliminary point of law arguing that, the applicant has no *locus standi* because in paragraph 1 of the affidavit supporting the application she affirmed as the administratrix of the estate of the late Kimolo Chobu. Thus, she ought to sue in the administratrix capacity and not in her personal capacity. On the merit of the application, it was argued that no good cause had been demonstrated to justify the extension of time which was wholly occasioned by the appellant's negligence. The applicant ought to have filed her appeal after obtaining the leave for extension of time granted by this court on 26th

July 2022 but he failed and has demonstrated no good cause to justify a further extension. In conclusion, he prayed that the application be dismissed with costs. That was the end of submission from the parties. Rejoinder submission was not filed.

I have dispassionately considered the above submissions alongside the affidavit bracing the chamber summons, its supporting documents and the respondent's counter affidavit. Before I determine the merit of the application, let me state from the outset that I have observed the preliminary point of law raised by the respondent in the course of his submission. The point he has raised is that the applicant has no *locus standi* to institute this application in her personal capacity. I refrain from entertaining and determining this preliminary point as it was improperly raised from the bar to the surprise of the applicant and this court and in total disregard of the settled procedures for raising of preliminary objections.

As regards the merits of the application, the present application being for leave for extension of time raises only one issue for determination, namely whether the application has merits. The law is settled that an application for extension of time is entirely within the discretion of the court but such discretion being judicial must be exercised judiciously according to the rules of reason and justice. The court will exercise its discretion in favour of the applicant only upon being satisfied that there is a good cause for the delay.

The term good cause has not been universally defined. It is dependent upon the facts of each particular case as stated by the Court of Appeal in

Tanga Cement Company Ltd v. Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001 [2004] TZCA 45 TanzLII; **Regional Manager, Tanroads Kagera vs. Ruaha Concrete Company Ltd**, Civil Application No. 96 of 2007 CAT (unreported); **Oswald Masatu Mwizarubi v, Tanzania Fish Processing Ltd**, Civil Application No.: 13 of 2010, CAT (unreported) and **Vodacom Foundation v. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 [2020] TZCA 1797 TanzLII.

Therefore, when determining whether or not a good cause has been demonstrated, the court should consider multiple factors as lucidly demonstrated by the Court of Appeal in the case of **Lyamuya Construction Company Limited vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 TanzLII where it was stated that when a court determining whether a good cause has been demonstrated should consider where the delay is inordinate, the applicant has accounted for all the period for delay; the applicant has shown diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and whether there exists a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Starting with the first condition as to the requirement to account for each day of delay, I have observed from the original application and its accompanying documents that as correctly submitted by all parties the decision sought to be challenged if the present application emerges successful was delivered on 08/02/2018. The duration of 45 days within which to lodge the appeal lapsed on or by 25/3/2018. The records also

shows that the applicant did not appeal within the time provided by the law. She filed an application for extension of time which was granted by this court as said earlier above but again, no appeal was filed within the extended time. Hence, this application.

For purposes of this application, the starting point for accounting the days of delay is on 26/7/2022 the date when the application for extension of time was granted by this court. The record shows that the applicant filed the instant application on 31st March 2023 which was about 8 months later. She was therefore duty bound to account for the duration between 26th July 2022 and 31st March 2023 when she filed the application but she miserably failed. She has casually claimed that she lost communication with her Advocate who prosecuted the application for extension of time thus, she had no clue that the application was concluded to her favour. No disclosure is made as to when the applicant became knowledgeable that the application was granted.

By failure to disclose the date and to provide an account of what she did after being knowledgeable of the previously granted leave for extension of time, the applicant miserably failed the requirement to account for delay and in consequence, she offended the principle that the duration of delay must be fully accounted for even if it is just for a single day as stated the case of **Bushiri Hassan vs. Latifa Lukiko Mashayo**, Civil Application No. 03 of 2007 CAT (unreported) where the Court of Appeal emphasized that:-

Delay of even a single day has to be accounted for, otherwise there would be no point of having rules

prescribing period within which certain steps have to be taken.

As regards the breakdown of communication between her and her counsel which is the sole ground advanced in favour of the application, it is outrightly rejected. Lack of knowledge about the status of the case as a result of poor breakdown of communication between the party to the case and his or her advocate does not and cannot suffice as a sufficient cause for extension of time. It is settled law that the party to the case who instructs an advocate to prosecute his or her case is duty bound to make follow up of the case. The party who does not follow up deliberately assumes the risk and should be prepared for the consequences. Dealing with a same scenario in **Lim Han Yun and Another vs Lucy Theseas Kristensen**, Civil Appeal No. 219 of 2019 [2022] TZCA 400 TanzLII, the Court of Appeal held thus:-

The appellants cannot throw the whole blame on their advocates. We think that a party, to a case who engages the services of an advocate, has a duty to closely follow up the progress and status of his case. A party who dumps his case to an advocate and does not make any follow ups of his case, cannot be heard complaining that he did not know and was not informed by his advocate the progress and status of his case.

Needless to emphasize, therefore that, the applicant herein having engaged an advocate, was expected to closely follow up her case and to maintain constant contact with him. Since she did not, she has none but herself to blame.

The other ground advanced by the applicant through paragraph 8 of the affidavit is that the intended appeal has overwhelming chances of success. This ground does not hold water as it is well settled that the determination of whether the appeal has an overwhelming chance of success or not, is the reserve of the appellate court and cannot be determined in the application for extension of time. Therefore, the ground has no merits.

That said and done, the application fails as the applicant has miserably failed to demonstrate a good cause for delay. Consequently, it is dismissed with costs.

DATED at **DODOMA** this 31st day of May, 2023.



A handwritten signature in blue ink, appearing to read "J.L. MASABO".

J.L. MASABO
JUDGE