

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISC. CIVIL APPLICATION NO. 997 OF 2024

CRDB BANK PLC APPLICANT

VERSUS

ASHURA MOHAMED SAID 1ST RESPONDENT

MUHSIN MAHMOOD RUHINDA 2ND RESPONDENT

RULING

6/6/2024 & 28/6/2024

ROBERT, J:-

This ruling is in respect of an application filed by CRDB Bank PLC ("the Applicant"), seeking an extension of time to lodge an appeal against the decision of the District Land and Housing Tribunal (DLHT) for Mwanza in Land Application No. 26 of 2019 delivered on 29th November, 2023. The application is made under section 41(1) and (2) of the Land Disputes Courts Act, and is supported by an affidavit sworn by Tumaini Andrew Dunduri Msechu, Counsel for the Applicant.

In his affidavit, counsel for the applicant averred that following the delivery of the DLHT judgment on 29th November, 2023, he requested a copy of the judgment and decree for perusal. He was informed that the copy

was not ready for collection and was advised to return after two weeks. After the stipulated period, he returned but was again informed that the documents were still not ready. He was asked to write a request letter and pay the requisite fees, which he did on 15th December, 2023. Eventually, he received the copies in early January, 2024.

The counsel further stated that he was availed with the judgment and decree on 8th January, 2024, and subsequently filed an appeal on 11th January, 2024, via the judiciary e-case management system, which was assigned admission number 000002082. However, the appeal was not admitted online. Upon enquiry with the Deputy Registrar and the IT Personnel on 16th January, 2024, it was discovered that the appeal could not be found in the system. He was advised to refile, but by then, the filing period had expired. Hence, the present application for extension of time.

At the hearing of this application, Mr. Tumaini Msechu, learned counsel for the applicant, submitted that the guiding principle for such applications is whether the applicant has shown good cause for the delay. He cited the case of **AG of Zanzibar vs Laemthong Rights Company Limited**, Civil Appeal No. 729/2015 of 2023, which outlines factors like reasons for delay,

length of delay, degree of prejudice to parties, and the need to balance interests of justice.

Mr. Msechu argued that the delay in this case was only five days, which has been duly accounted for in the applicant's affidavit. He stressed that the applicant acted diligently and the delay was not due to negligence. He added that the respondent would not be prejudiced by the extension, while the applicant would suffer significant prejudice if denied the opportunity to appeal, particularly as it pertains to a loan facility secured by disputed land which was declared void by the trial court without substantial evidence.

In response, Mr. Alex Luoga, learned counsel for the respondent, opposed the application on the grounds that the applicant failed to file the appeal in the correct registry, citing annexure CRDB 2 indicating it was filed at the High Court, Land Registry instead of this Court. He also argued that the applicant received the judgment on 15th December, 2023, but the judgment was certified on 29th November, 2023, and the applicant had not accounted for all the days of delay. He referenced **CRDB Bank PLC vs Amida Seif Hamad**, Misc. Application No. 38/2023, where the court held that filing in the wrong registry is not a technical delay and rejected the extension of time.

In rejoinder, Mr. Msechu maintained that the appeal was properly filed within the formal online judiciary filing system and was assigned an admission number, which indicates the court where it was filed. He reiterated that the judgment was collected on 15th December, 2023, and even if collected earlier, the appeal filed on 11th January, 2024, was within the prescribed time frame.

The primary issue for determination is whether the applicant has shown good cause for the delay in filing the appeal.

The applicant's reason for the delay stems from the late availability of the judgment and decree and technical issues within the judiciary e-case management system. The applicant's affidavit and supporting documents establish that efforts to file the appeal were made diligently and promptly once the judgment and decree were received. The system's malfunction, which resulted in the appeal being untraceable, should be regarded as a technical issue beyond the applicant's control. In the circumstances, technical delays arising from procedural or systemic failures often warrant judicial leniency to ensure justice is not unduly denied.

The delay in this case is a mere five days. The Court of Appeal of Tanzania has often held that a short and reasonable delay, especially when accounted for, should not be a bar to the right of appeal.

Granting the extension would not unduly prejudice the respondent, who can still challenge the merits of the appeal. Conversely, denying the extension would unduly prejudice the applicant by depriving it of the right to appeal a decision that has significant financial implications.

The need to balance the applicant's right to appeal and the respondent's interest in the finality of litigation is paramount. Given the short delay and the reasons provided, the balance tilts in favor of granting the extension.

That said, this Court finds that, the applicant has demonstrated good cause for the delay in filing the appeal. Therefore, the application for extension of time is hereby granted. The applicant is allowed to lodge the appeal out of time within fourteen (14) days from the date of this ruling.

It is so ordered.

The seal of The High Court of Tanzania, Mwanza, is circular with a blue border. Inside the border, the text "THE HIGH COURT OF TANZANIA" is written at the top and "MWANZA" at the bottom, separated by two small stars. The center of the seal features a shield with a scale of justice and a sword, flanked by two figures. To the right of the seal is a handwritten signature in blue ink. Below the signature, the text "K.N. ROBERT" is printed, followed by "JUDGE" and "28/6/2024".

K.N. ROBERT
JUDGE
28/6/2024

