

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF MANYARA
AT BABATI

MISC. LAND APPLICATION NO. 64 OF 2023

(Arising from Land Application No. 72 of 2017 in the District Land and Housing Tribunal for Babati at Babati)

ISMAIL RAMADHANI.....1ST APPLICANT

RAMADHANI SHABANI SUNGI.....2ND APPLICANT

VERSUS

CHARLES RUBEN.....RESPONDENT

RULING

07th February & 5th March, 2024

Kahyoza, J.:

This is a ruling in respect of an application for extension of time within which to allow **Ismail Ramadhani** and **Ramadhani Shabani Sungi** (the applicants) to file an appeal against the judgment and decree of the District Land and Housing Tribunal for Babati at Babati (the DHLT) in Land Application No. 72 of 2017 dated 13/05/2022.

A brief background from the trial tribunal record is, that on 12/10/2017 when the said application before the DLHT was called – as it was scheduled for mention, the tribunal was satisfied that the applicants (the then

respondents) failed to file the Written Statement of Defence (WSD) by relying on the availed proof of service. In the aftermath, the DLHT ordered an application to proceed *ex parte*. On the 13/05/2022 the DLHT delivered its judgment in favour of the respondent, by declaring Charles Ruben to be the lawful owner of the disputed land, measuring two acres. Subsequently, the tribunal issued an eviction order.

To support the application for extension of time the applicants' deponed in their joint affidavit as follows-

"4. That, the application No. 72 of 2017 was heard ex-parte unknowingly and the Applicants herein have never been served with summons or notice of hearing in the whole time.

5. That, also, when the case was presented in the trial tribunal all applicants herein were not present of which the 1st applicant was nursing his father (the patient) who is also the 2nd applicant hereto in this present application.

6. That, the 2nd applicant was hospitalised for medications at different occasion from the year 2015 but luckily and currently he got some recovery or improvement. Attached herewith is the medical Certificates annexed as Annexure RS2 to form part of this application."

The Respondent had the following in the counter affidavit-

"3. That, the content of paragraph 3 and 4 of the applicant's affidavit are totally disputed the applicants shall put to the strict proof thereof. It was definitely that the application No. 72 of 2017 was heard ex-parte on the event that the Applicants herein was served summons several times and were never attended the case before the District Land and Housing Tribunal for the best reasons known to themselves.

4. That, the content of paragraph 5 and 6 of the Applicants Affidavit is vehemently disputed the applicant shall put to the strict proof thereof. That all the Applicants were there in Sigino village and were known the case against themselves and were always served a summons but ignored unreasonably and there is no medication done towards his father instead laying this honorable court with wrong proof and forged hospitalized documents since 2015 that is before the application No. 72 of 2017."

The hearing of this application was by way of oral submissions. Parties were unrepresented and they had nothing to add to their respective affidavits.

It is settled that an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause. See the case of **Mumello v. Bank of Tanzania** [2006] E.A. 227.

The applicants were required to appeal within 45 days as provided by section 41 of the **Land Disputes Courts Act**, [Cap. 216 R.E. 2019]. It provides that-

"41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

The records bear testimony that the impugned judgment was delivered on 13/05/2022, and this application was filed on line on 29/09/2023, and the fees were paid on the 03/10/2023, it is obvious that the applicants are time barred to file an appeal. The issue for determination is whether the applicants have established good cause for this court to extend time within which to file an appeal to this court.

It is well settled that, 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. In **Lyamuya Construction Co Ltd vrs. Board of Registered**

of Young Womens Christian Association of Tanzania (Civil Application 2 of 2010) 2011 TZCA 4 (3 October 2011) the following guidelines were formulated in considering extension of time:-

"(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."

It is unfortunate that the applicants failed to disclose as to when they obtained the necessary copies, neither does the tribunal's records show when it supplied the record. In the circumstances, I resort to deal with the substantive part, which is the reasons advanced by the applicants.

As the applicants' affidavit depicts, the 1st applicant is said to have been nursing his sick father (the 2nd applicant), who was sick since 2015 and recovered some times before the filing of this application. He also deponed to have not issued with summons to attend the matter before the DLHT, thus, they were unaware as to what was going on.

It is evident that the applicants also omitted in their affidavit to mention as to when they become aware as of the existence of Land Application No. 72 of 2017 and as to when the 2nd Applicant recovered. I find these omissions to be of design and not by chance, the records of the trial tribunal speak volumes, that on the 30/01/2018, 04/04/2018, 17/09/2018, 07/01/2018, 04/03/2019, 25/04/2019, 28/08/2019, 10/10/2019, 12/02/2020, 07/05/2020, 14/09/2020, 27/10/2020, 17/12/2020, 17/03/2021, 05/05/2021, 29/06/2021, 27/01/2022, 27/04/2022 the 1st applicant was present at the DLHT and reported that the 2nd applicant was sick. On 29/04/2022, 11/05/2022 and 13/05/2022 when the impugned judgment was delivered, the applicants were all present at the DLHT. As if that is not all, the records avails two proof of service to the applicants, dated 11/09/2017. In fine, the joint affidavit by the applicants contains lies, particularly on item 4. The Court of Appeal in **Glory Shifwaya Samson vs Rapahel James Mwinuka** (Civil Application 506 of 2019) [2021] TZCA 48 (24 February 2021) held that-

"It is elementary that an affidavit that contains falsehood should not be acted upon."

As I have articulated afore, the non-disclosure of relevant facts that ascribes to ascertainment of the period of delay led to the finding that the

applicants were not diligent and prompt in setting the appeal process on motion. The inclusion of false averment in the joint affidavit not only justifies not to act on the affidavit but also, a finding that the applicants do not have any good cause, and indeed they have failed to establish good cause whatsoever for extending time.

In the end I dismiss the application for want of meri with costs.

It is ordered accordingly.

Dated at Babati this 5th day of **March**, 2024.



A handwritten signature in black ink, appearing to read "J. R. Kahyoza", written over a horizontal line.

J. R. Kahyoza
Judge

Court: Ruling delivered in the presence of the applicants and the respondent. B/C Ms. Fatina (RMA) present.

A handwritten signature in black ink, appearing to read "J. R. Kahyoza", written over a horizontal line.

J. R. Kahyoza
Judge

05/03/2024

