

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

**(LAND DIVISION)**

**TANGA SUB REGISTRY**

**AT TANGA**

**MISC. LAND APPLICATION NO. 81 OF 2022**

**ZAINA ATHUMANI ISMAIL ..... APPLICANT**

**VERSUS**

**ERIS PETRO CHISHAKO ..... 1<sup>ST</sup> RESPONDENT**

**MESHAKI WILLIAM CHISHAKO ..... 2<sup>ND</sup> RESPONDENT**

*(Originating from Land Application No. 02 of 2022 of the Korogwe District Land  
and Housing Tribunal)*

**RULING**

*26/02/2024 & 13/03/2024*

**NDESAMBURO, J**

Zaina Athumani Ismail, the applicant in this matter is seeking an extension of time within which she can appeal to the High Court against the ruling in respect of Application No. 02 of 2022 of the District Land and Housing Tribunal for Korogwe (DLHT). The application is made by way of chamber summons filed under Section

41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and is supported by an affidavit of the applicant.

In paragraphs 2 to 6 of her affidavit, the applicant vehemently contests the decision of the DLHT, which upheld the preliminary objection raised by the first respondent and subsequently dismissed the application. In paragraph 6, she argues that there is a significant issue to be determined regarding this decision. Furthermore, in paragraph 7, the applicant asserts that despite her request for a copy of the ruling, which she made well within the prescribed time on the 20<sup>th</sup> of October 2022, it was not supplied to her until the 1<sup>st</sup> of December 2022, after the expiration of the time limit for filing the appeal. Consequently, she contends that the untimely filing of the appeal was due to sufficient and good cause.

In the counter-affidavit deposed by the first respondent, he contends that the Applicant has not adduced any sufficient reason to warrant this court to grant the application and thus the application deserves to be dismissed with costs. The second respondent did not file the counter affidavit despite being served.

The matter was agreed to be heard by way of written submission and the applicant and the first respondent filed their submissions well within the scheduled time.

In her written submission the applicant alleged two reasons in support of her application. One, the delay in appealing within time was the failure of DLHT to supply her with a copy of the ruling as the mandatory requirement document to appeal in this court. She asserted that, after the ruling handed by the DLHT on the 13<sup>th</sup> of October 2022, she wrote to the tribunal requesting to be supplied with copies of the ruling and proceeding on the 20<sup>th</sup> of October 2022. The same was supplied to her on the 1<sup>st</sup> of December 2022, one day after the expiration of the time she could appeal. Realizing that she was late, she then filed the current application on the 28<sup>th</sup> of December 2022 after having received the copies, just 27 days only. She supported her application with the decision of the High Court of **Vicent John v Fanuel John and another**, Misc. Land Case No. 15 of 2017 to demonstrate that, she had demonstrated good and sufficient cause.



Two, the applicant argued that the DLHT's decision, which upheld the preliminary objection and deemed the matter res judicata, was flawed. The applicant emphasized that she was not a party to Application No. 9 of 2016, which was decided by the Mswaha Ward Tribunal and hence there is a serious issue to be determined by this court.

On the other side in countering this application first respondent argued that the applicant has failed to advance strong and sufficient reasons for her delay in filing her application and also failed to account for every day of delay. He cited the decisions of the Court of Appeal in **Sebastian Ndaula v Grace Rwamafa**, Civil Application No. 4 of 2024 and this court in **Leons Barongo v Sayona Drinks Ltd, (2013) LCCD 28** to cement his argument and hence prayed for the application to be dismissed with costs.

In the rejoinder, the applicant reiterated her submission in chief.

After going through the affidavit and submissions made by both sides, the central issue for consideration and determination is whether the applicant has advanced good and sufficient cause to warrant this

court to exercise its discretion and grant the extension of time prayed for.

Having carefully considered the submission by parties, the application has been preferred under section 41(2) of Cap 216. The provision provides:

*"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 good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days"*

Based on the provided provision, the applicant was required to file her appeal within 45 days following the dismissal of her application by DLHT. However, it is important to note that the provision also imposes an obligation on the applicant to demonstrate good cause for any delay in filing the appeal.

In applications for an extension of time, courts are vested with discretionary powers, yet they must exercise such authority judiciously. The Court of Appeal unequivocally articulates this stance in the case of **Tanga Cement Company v Jumanne D. Masangwa & Another,**

Civil Application No. 6 of 200. In this case, the court held inter-alia that:

*"An application for extension of time is entirely in the discretion of the court to grant or refuse it. This unfettered discretion of the court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so".*

In assessing the degree of good cause as the basis for granting such applications, no specific definition has been provided by any court within our jurisdiction. Nevertheless, the Court of Appeal guided this matter in the case of **Valerie Mcgivern v Salim Fakhrudin Dilala**, Civil Application No. 11 of 2015, it held that:

*"That no particular reason or reasons have been set out as standard sufficient reasons, what constitutes good cause cannot therefore be laid down by hard and fast rules. The term good cause is a relative one and is dependent upon the circumstance of each individual case".*

According to the applicant's affidavit in paragraph 7 on her first reason for the delay, it is evident that her delay in filing the appeal was directly attributable to DLHT's failure to provide her with a copy of



the ruling that dismissed her application within the prescribed time frame for appeal. The records indicate that the ruling was delivered on 13<sup>th</sup> October 2022, and the applicant applied for her copy on 20<sup>th</sup> October 2022. However, she did not receive the requested documents until 1<sup>st</sup> December 2022. The delay of these days was solely attributed to the non-supply of the requested documents. Consequently, the applicant cannot be held responsible for any delays during this period.

However, despite being supplied with the mandatory document required for filing an appeal, the applicant did not lodge her appeal until the 28<sup>th</sup> of December 2022, resulting in an almost 27-day delay. The applicant has not provided any explanation for these additional days. It is important to note that, each day of delay must be accounted for, as even a single day of delay is significant and must be considered. See **Sebastian Ndaula v Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014, **Saidi Ambunda v Tanzania Harbours Authority**, Civil Application No. 177 of 2004 and **Abood Soap Industries Ltd v Soda Arabian Alkali Limited**, Civil Application No. 154 of 2008 (all

unreported). That being said, it is evident that the applicant has failed to justify every day of delay in filing the appeal.

The second reason is that of illegality. The applicant complains that the decision of the DLHT which upheld the preliminary objection and dismissed the application is tainted with serious issues which need to be determined by this court.

In the application before the DLHT, the first respondent raised a preliminary objection, contending that the application was res judicata because the same matter had been adjudicated by the Mswaha Ward Tribunal in Application No. 9 of 2016. The applicant argued that she was not a party to that previous matter and that the subject matter differed. However, as stated earlier, the DLHT upheld the preliminary objection and subsequently dismissed the case. It is pertinent to note that the parties before the Mswaha Ward Tribunal were Eres Petro Chishako v Mishaki William, whereas the parties before the DLHT were Zaina Athumani Ismail v Eres Petro Chishako and Meshaki William Chishako. Additionally, the cause of action at the Ward Tribunal involved a 5-acre land, whereas, at the DLHT, it concerned a 3.5-acre



land situated in Mswaha village. In my opinion, these facts warrant consideration by this court regarding the applicability of the principle of res judicata as determined by the DLHT.

Therefore, the application is hereby allowed without costs, in the interest of fostering a positive relationship among the parties involved. The applicant is granted 30 days within which she can lodge her appeal within this court.

It is so ordered

**DATED** at **TANGA** this 13<sup>th</sup> March 2024



  
H. P. NDESAMBURO

**JUDGE**