

**IN THE HIGH COURT OF THE
UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION No. 655 OF 2019

(Arising from the District Land and Housing Tribunal for Kinondoni in Land Application No. 33 of 2010)

SAID FUNDI (MISHEMISHE).....APPLICANT

VERSUS

TUPONE MWASONGWE.....RESPONDENT

Date of Last Order: 27.07.2020
Date of Ruling 07.09.2020

RULING

V.L. MAKANI, J

This application is by SAID FUNDI the applicant herein. He is applying for extension of time within which to appeal against the decision of Kinondoni District Land and Housing Tribunal (The **Tribunal**) in Application No.33 of 2010 delivered on 15/09/2016. He is also praying for any other relief the court may deem fit and just to grant.

The application is made under section 41(2) of the Land Disputes Courts Act, 2002, CAP 216 RE 2019 and is supported by the affidavit of the applicant herein.

The application was argued by way of written submissions and the applicant's submission was drawn gratis by M.R. Kiondo, and filed by the applicant himself; while respondent's submissions were drawn and filed by respondent herself.

Submitting in support of the application, Kiondo prayed to adopt the chamber summons and affidavit of the applicant. He said that the delay to file appeal was due to sufficient reasons including illness. He said further that it is settled law that illness and probable case of illegalities as highlighted in paragraph 20 of the affidavit constitute good cause for extension of time. In support thereof he cited a number of authorities amongst them being the case of **VIP Engineering & Marketing Limited & Others vs. Citibank Tanzania Limited, Consolidated Civil Reference No. 6, 7 and 8 of 2006** (unreported) where it was held that:

"... a claim of illegality of the challenged decision constitutes sufficient reasons for extension of time ... regardless of whether or not reasonable explanation has been given by the applicant under the rule to account for the delay."

He insisted that he has sufficient and good reasons for the grant of extension of time within which to file an appeal. He prayed for his application to be granted.

In reply Mr. Mwasongwe said that, the applicant's applications have chiefly centred on illegality, in the sense that the decision of the tribunal is tainted with illegalities and irregularities and hence deserve to be quashed. He said further that the applicant at first in 2016 instituted similar application but did not expressly state the kind of illegalities in the decision of the Tribunal. To his opinion that is fatal. He said that the applicant had again instituted similar applications in this court including Land application No.40/2017 which he withdrew

on 06/09/2018. That he also filed Misc. Application No.744/2018 which he withdrew on 27/03/2019 for being incompetent. He insisted that the applicant has attributed his delay to social and medical problems but has forgotten since he began the matter in 2016 he has been on trial and error and waste of time he cannot account for, that he has been negligent and lazy. He further said four years has lapsed from 2016 when the Tribunal delivered its judgment until when the applicant lodged the present application and that the delay is inordinate and cannot be accommodated by law. He prayed for this application to be dismissed with costs.

The applicant did not file his rejoinder.

I have gone through the affidavit and the submissions by the parties herein. It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002** (**CAT-Dar es Salaam** (unreported)). Being the discretion of the court different judges have come with different approach when exercising their powers, one of the famous decision of the Court of Appeal pointed out criteria when the court is determining whether to grant or refuse extension of time. In the case of **Henry Leonard Maeda & Another vs. Ms. John Anael Mongi, Civil Application No. 31 of 2013 (CAT)** where it was stated:

"In considering an application under the rule, the court may take into consideration, such factors as, the length

of delay, the reason for delay and the degree of prejudice that the respondent may suffer if the application granted."

The applicant's reason for delay to file an appeal within time has been summarized in paragraphs 14 and 16 of his affidavit that he was prevented by social and medical problems facing his mother that resulted to his demise and negligence of his former advocate one AHMED MCHORA whom he alleged that he came to realize was not a registered Advocate.

I have read the records accompanying the application and noted that most of the reasons of delay have discrepancies. **One**, the applicant alleged that after the delivery of the judgment he gave an oral notice of his intention to appeal and prayed for copies of the proceedings, judgment and decree to support his appeal, but he was not given these documents. This cannot be a true explanation, as the practice is that copies of the proceedings, judgment and decree for purposes of an appeal has to be issued upon a written request. Since there is no such evidence supplied to support this allegation, the applicant's assertion on the oral prayer cannot be relied upon. **Two**, the applicant alleged that on 14/10/2016 he travelled to Kilwa to attend his sick mother but there is no evidence to the effect that he indeed travelled on that particular date, he might have been there on different dates. **Three**, the applicant alleged to have instructed his former advocate to appeal but did not file appeal within time instead he filed extension of time to file appeal, the applicant is not clear as to when he actually instructed his advocate, was it before he travelled to Kilwa or during his stay in Kilwa or after he came back from Kilwa. Looking at the

affidavit, the instruction seems to be after 14/10/2016 (the date he travelled to Kilwa) and if that is the case it means that he gave instruction beyond prescribed time to appeal and that period was not accounted for.

The applicant has been filing a number of incompetent applications which as a result were struck out, the last one was Misc. Land Case Application No.202 of 2002 which the applicant has not managed to state as to when it was filed. However, the records show that the same was struck out on 25/09/2019. From when the last application was struck out on 25/09/2019 to when the applicant filed this application on 18/11/2019 it is more than 50 days. But the applicant has not given reasons why it took him so long to file this application. Failure to provide sufficient and valid explanation in an application for extension of time means that the applicant has failed to account for each and every single day of the delay (See the case of **Lyamuya Construction Company Limited Vs. Board of Registered Trustees Of Young Women's Christian Association Of Tanzania, Civil Application No. 2 Of 2010 (CAT)**).

It was expected the applicant would account for everyday of his delay and provide proof for any obstacle that hindered him to file his application within time. Since that was not done, I am of the firm view that this application has no merit and it is an abuse of the process of the court.

For the reasons I have endeavored to demonstrate hereinabove, I am persuaded that the applicant has failed to establish sufficient cause to warrant this court to exercise its discretionary powers to grant extension of time to file his appeal. Subsequently, the application is hereby dismissed with costs for want of merit.

It is so ordered.


V.L. MAKANI
JUDGE
07/09/2020

