

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

MISC. LAND CASE APPLICATION NO 547 OF 2019

(Originating from District Land and Housing Tribunal of Kinondoni at Mwananyamala
in Misc. Application No. 86 of 2008; Arising from Land Application No. 500 of 2018)

MAIMUNA ABDALLAH MPANDA.....APPLICANT

VERSUS

EQUITY BANK (KARIAKOO BRANCH)RESPONDENT

Date of Last Order: 30.10.2020
Date of Ruling 11.12.2020

RULING

V.L. MAKANI, J

The applicant in this application MAIMUNA ABDALLAH MPANDA is seeking for orders for extension of time within which to file a petition of appeal out of time. The application is made under section 41(2) of the Land Disputes Court Act No. 2 of 2016 and section 14(1) of the Law of Limitation Act CAP 89 RE 2002. The application is supported by the affidavit of the applicant. And the respondent filed a counter-affidavit to oppose the application, which was sworn by Ereneus Peter Swai, Advocate.

The applicant is seeking extension of time so that she can appeal against the decision in Misc. Land Application No. 86 of 2018 whose judgment was delivered on 29/01/2019 by Hon. R.L. Chenya, Chairman.

With leave of the court the application was argued by way of written submissions drawn and filed by the applicant herself and Mr. Swai on behalf of the respondent.

The applicant submitted that the ruling in Misc. Land Application No. 86 of 2018 arising from Land Application No. 500 of 2013 was delivered on 29/01/2019. She said the reason for the delay in filing the appeal was due to the fact that she was in remand custody in Segerea Prison charged with Criminal Case No. 25/2019 until on 05/03/2019 when a Removal Order was issued (**Annexure MP-1** to the affidavit). She said after release from the prison she managed to get the copy of the ruling and decree on 11/03/2019 and by then she was already out of the prescribed time to file an appeal. The applicant said her imprisonment is sufficient reason to grant extension of time as she has accounted for the delay. She cited the case of **Salum Issa Sobo (Legal Representative of the late Asha Mohamed) vs.**

Mariam Msengi, Civil Application No.136 of 2015 (CAT-DSM)

(unreported). She said application was filed on 26/09/2019 but that was due to the fact that during this whole period there was arrangement to settle with the respondent, but the said arrangement was unsuccessful because the nature of the claim originated from a loan. The applicant also pointed out grounds to be relied upon in the appeal if the application for extension of time would be successful. She prayed for the application to be granted with costs.

Mr. Swai adopted the contents of his counter-affidavit. He submitted that an application for extension of time is the discretion of the court but there must exist a reasonable and sufficient cause for the court to grant such an application and the applicant must account for each and every day of delay. He said the applicant has failed to account for each and every day of the delay of six months. Mr. Swai relied on the cases of **Dar es Salaam City Council vs. S. Group Security Co. Ltd, Civil Application No. 234 of 2015 (CAT-DSM)** (unreported), **Mr. Manson Shaba & 143 Others vs. The Ministry of Works & The Attorney General, Civil Application No. 244 of 2015 (CAT-DSM)** (unreported) and **Elfazi Nyatega & 3 Others vs. Caspian Mining Ltd, Civil Application No. 44/08 of 2017**

(CAT-Mwanza)(unreported). Mr. Swai further pointed out that even if we agreed that there was an arrangement for settlement which fact is denied, the applicant was supposed to file the appeal while trying to settle out of court. Mr. Swai alleged that this application is an abuse of the court process and the same has been brought in bad faith as the applicant has in several times made series of applications before the Tribunal which were dismissed before coming to this court. He said the applicant is trying to prevent the respondent from exercising the right in her mortgage as per the loan agreement. Mr. Swai concluded that the applicant has failed to show sufficient cause for the court to grant the orders for extension of time and she has also failed to account for the delay. He prayed for the application to be dismissed with costs.

In her rejoinder the applicant argued the court when granting the application to look at the atuer of the case the sourrounding circumstances and the weight and implication of the issues involved. She relied upon the case of **Republic vs. Yona Kaponda & 9 Others [1985] TLR 85.**

I have gone through the affidavit, counter-affidavit and the submissions by the parties. The main issue for determination is whether this application has merit. It is settled law that grant of extension of time is the discretion of the court upon sufficient cause as was held in the cases of **Yusuf Seme & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002** (unreported).

In the affidavit by the applicant the main reason for the delay by the applicant is that she was in Segerea Prison and by the time she was released time for filing appeal had already elapsed. However, as stated in the cited cases of **Dar es Salaam City Council, Mr. Manson Shaba & 143 Others, Salum Issa Sobo (Legal Representative of the late Asha Mohamed)** and **Elfazi Nyatega & 3 Others** (supra), every day of delay has to be accounted for.


In this present case, as stated hereinabove, judgment in Misc. Land Application No. 86 of 2018 was delivered on 29/01/2019 and the applicant was released from Segerea Prison on 05/03/2019 and she managed to get copies of the judgment and decree on 11/03/2019. This application was filed on 26/09/2019 more than six months. The delay of six months cannot be grounded on the imprisonment of the applicant or the late receipt of the copies of the judgment and decree. This is because the applicant was released on 05/03/2019 and since she managed to get copies of the judgment

and decree on 11/03/2019, it was therefore expected that after the receipt of the said copies of judgment and decree, the applicant would have filed the application for extension of time within a reasonable time, say one or two months. But six months is far too long, and since there is no other reason the court cannot be convinced that sufficient cause has been advanced. The applicant has said in her submissions that there were arrangements for settling the matter out of court, but this fact is not pleaded in her affidavit. Subsequently this issue of settlement out of court cannot therefore be considered by this court.

In the result and for the reasons stated above, it is evident that the applicant has failed to account for the delay and hence establish sufficient reasons for the court to exercise its discretionary powers to grant extension of time to file an appeal. Consequently, the application has no merit and it is hereby dismissed with costs.

It is so ordered.




V.L. MAKANI
JUDGE
23/11/2020