

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

MISC. LAND CASE APPLICATION NO.246 OF 2019

GEORGE BADAGA APPLICANT

VERSUS

PILI YUSUF KAWIZA RESPONDENT

RULING

S.M KALUNDE, J:-

The right to appeal is among the fundamental principle of our Legal System. However, this Right is not automatic, it is subject to rules and procedures including limitation. The law has placed times lines for filing appeals against different decisions. An appeal filed out of the prescribed timeframe is rejected. However, in acknowledging the fact that a person may be precluded from filing an appeal on time by some justifiable reasons the law has provided an opportunity for such individuals to file an application for extension of time within which to file the appeal.

In the instant application, the applicant is seeking for extension of time to appeal against the decision of the District Land and Housing Tribunal for Temeke ("**the Tribunal**") in **Land Appeal No. 01 of 2015** delivered in 2016.

The facts leading up to the present application are that, in 2014, before, **Somangila Ward Tribunal ("the ward tribunal")**, the respondent, **PILI YUSUF KAWIZA**, successfully filed **Civil Case**

No. 56 of 2014 against the appellant for recovery of a piece of land allegedly trespassed by the appellant. Aggrieved by the decision of the ward tribunal the appellant filed **Appeal No. 01 of 2015** at the District Land and Housing Tribunal for Temeke District. Again, he lost the appeal before the Tribunal.

Upon losing Appeal before the tribunal the applicant was aggrieved and wanted to challenge the decision of the Tribunal before this Court. However, instead of logging an appeal with the Tribunal, he logged **Land Appeal No. 223 of 2017** with this Court. As a result the appeal was struck out by this Court on 18th September, 2018. Subsequently on 16th October he filed **Misc. Land Application No. 725 of 2018** which was again struck out. Being out of time and eager to prosecute his appeal, he preferred the present application which was filed on 29th April 2019.

Hearing of this Application was conducted through written submissions, the applicant drew and filed his submissions in person while the respondent was represented by **Mr. Twarah Yusuph**, learned advocate.

I have judiciously gone through the pleadings and submissions filed for and against the application. The pressing issue for my determination for now is whether the application is merited.

Before going to the merit of the application I wish to handle what appeared to be a preliminary objection as raised by Mr. Yusuph in his submissions. In essence, the counsel argued that the application was brought under wrong provision of law. Admittedly, the present application is brought under section 41 (2) instead of

section 38 (1) of **the Land Disputes Courts Act, Cap. 216**. As pointed out above, for appeals originating from the Ward Tribunal, the relevant section is section 38 (1), the section reads:

"38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court.

*Provided that, **the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.**" [Emphasis mine].*

The position of the law in relation to preliminary objections is that all objections must be raised before hearing commences and must be specifically pleaded.

Further to that, it is a trite law that, submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered in Court, either through, a plaint, written statement of defence or through an affidavit or counter affidavit. Since the said objection was not raised in the pleadings and since it does not relate to the jurisdiction of the Court, which can be raised at any stage, I overrule the said objection.

I will proceed to the merits of the case, in accordance with the affidavit filed in support of the application the main ground for the delay is inadvertence in filing an appeal before this Court, instead of filing it before the Tribunal. As a result of that inadvertence the applicant spent a year prosecuting Land Appeal No. 223 of 2017 before this Court, until it was struck out on 18th September, 2018.

The position of the law has been that Court considering applications of this nature are enjoined to make a distinction between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted.

In the present case the instead of filing an appeal with the Tribunal, the applicant, a lay person, filed the same with this Court in 2017 he spent time prosecuting it until it was eventually struck out in 2018. This period in my view ought to be excluded as a technical delay not an actual delay as such. I find support in this view in the case of **Fortunatus Masha vs. William Shija and Another** [1997] TLR 154 and **Salvand K. A. Rwegasira vs. China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006, CAT (unreported)

In **Salvand K. A. Rwegasira** (supra) the Court of Appeal stated:

"... A distinction should be made between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense

that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. in these circumstances an extension of time ought to be granted."

The question now would be whether the applicant acted immediately upon noticing the discrepancies in the prosecution of his appeal. the answer to that is in the affirmative. It on record that the appeal before this Court was struck out on 18th September, 2018, subsequently on 16th October he filed Misc. Land Application No. 725 of 2018 which was again struck out hence the present application which was filed on 29th April 2019. In **Michael Lessani Kweka vs. John Eliafye** [1997] TLR 152, the Court of Appeal observed that:-

"Although generally speaking a plea of inadvertence is not sufficient, nevertheless I think that extension of time may be granted upon such plea in certain cases, for example, where the party putting forward such plea is shown to have acted reasonably diligently to discover the omission and upon such discovery, he acted promptly to seek remedy for it "

Also see **Standard Chartered Bank (Tanzania) Ltd. v. Bata Shoe Company (T) Limited**, Civil Application No. 101 of 2006 (unreported) and **Elias Masija Nyang'oro & Others vs Mwananchi Insurance Co. Ltd** (Civil Appl. No. 552/16 of 2019) [2021] TZCA 61; (02 March 2021).

Mindful of the above position of the law, I am satisfied that the applicant has been able to demonstrate that he acted promptly, and that there was no negligence or sloppiness on his part, I therefore find that he acted diligently in prosecuting his appeal.

Having said so, I grant the application without costs. The Applicant is required to file his Appeal within 21 days from the date of obtaining certified copied of this decision.

It is so ordered.

DATED at DAR ES SALAAM this 30th day of APRIL, 2021.




S.M. KALUNDE

JUDGE

ORIGINAL