

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 638 OF 2020**

*(Arising from Application No. 84 of 2017 of the DLHT Ulanga at Mahenge)*

**KIHOMA G. MGOHI.....1<sup>st</sup> APPLIC**

**ANGELINA G. MGOHI.....2<sup>nd</sup> APPLICANT**

**VERSUS**

**SAID A. KINEMITE.....RESPONDENT**

**RULING**

*08/05/2021 & 12/07/2021*

**Masoud, J.**

The applicant herein is aggrieved by the decision of the District Land and Housing Tribunal of Ilala exercising its original jurisdiction in Application No. 84 of 2017. The judgment that the applicants are aggrieved of was undisputedly delivered on 27/02/2020, and its decree was extracted on 27/03/2020. The present application is for extension of time. It is supported by a joint affidavit of the applicants. It is brought under section 41(2) of the Land Disputes' Courts Act, cap. 216 R.E 2019 by the applicants. It was instituted on 09/11/2020. The application is opposed by the respondent and a counter affidavit in that respect was duly filed.

Both parties were represented by learned Advocates. The application was thus conveniently conducted by filing written submissions. Both parties, dutifully, complied with the filing schedule set by the court, hence this ruling.

Going by the joint affidavit, the applicants were duly supplied with the copies of the judgment and decree on 14/04/2020. They contend that they were already out of time when the said copies were supplied to them. Having engaged an Advocate, they ably filed a Misc Land Application No. 198 of 2020 on 16/04/2020 seeking extension of time within which to appeal out of time. They withdrew the application on 04/11/2021 as it was brought under a wrong provision of law, and requested in vain on 04/11/2021 for copies of the said proceedings and order. A copy of the request letter dated 04/11/2021 duly stamped on 04/11/2021 was annexed to the affidavit.

Despite the above averments by the applicants, the respondent's averments in his counter affidavit constituted of noting, general denials and putting the applicants to strict proof. The respondent, for instance, noted that the applicants were supplied with copies of the judgment and decree on 14/04/2021. The respondent also noted, for example, the fact

that the application which was earlier filed by the applicants on 16/04/2020 had to be withdrawn on 04/11/2020 as it was filed under a wrong provision of law. The rest of the averments by the applicants were generally denied.

The rival written submissions by the applicants and respondent are on the record. I need not reproduce them in their details. They respectively mirrored, to a large extent, the joint affidavit and the counter affidavit of the applicants and the respondent which were duly adopted in the respective submissions:

It is only worth noting that the applicants added some facts which were not in their joint affidavit. The same were to the effect that they made several follow-ups including writing a reminder to the trial tribunal requesting to be supplied with the relevant copies. The other fact was that the present application was filed just a day after the earlier application was withdrawn and immediately after lodging a letter requesting for copies of the proceedings and order in relation to the withdrawn application. Nonetheless, the latter facts are within the framework of the joint affidavit whose application was truly filed on 5/11/2021, a day after the undisputed withdrawal of the earlier application.

Arguing that the applicants have disclosed sufficient reasons for granting of the application for extension, reliance was made on the case of **Kalunga and Company Advocates vs National Bank of Commerce Ltd** [2006] TLR 235 in relation to the discretion of the court and materials upon which the court may exercise its discretion given. Reliance was equally made on the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd**, Civil Application No. 33 of 2015 where Mziray JA, said at page 2 of the judgment:

*Extension of time is a matter for discretion of the Court and that the Applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time.*

On the other hand, the respondent replied by opposing the submissions. Indeed, the gist of the submissions had it that there were no materials disclosed upon which the court may exercise its discretion in favour of granting the extension of time.

As far as I am concerned, the delay between the delivery of the judgment sought to be appealed from, and the filing of the withdrawn application was very well accounted for in that the applicants had to wait to be supplied with copies of the judgment and the decree. The same were supplied on 14/04/2020 almost two years after the delivery of the

judgment. Having obtained the relevant copies on 14/04/2020, the applicant filed the withdrawn application on 16/04/2020, just after a lapse of only two days. Again, having withdrawn the application on 04/11/2020, the applicants filed the present application on 05/11/2020, just after a lapse of one day.

The delay in filing the application cannot in the circumstances be said to be inordinate and without sufficient reason. I have had regard to the time spent in prosecuting the withdrawn application which was at best noted by the respondent as is clear in the counter affidavit. There were no allegations for negligence or lack of diligence on the part of the applicants raised in the counter affidavit and which could have been considered by the court. It is for such reason, I think, the respondent did not provide materials to contradict the reasons given in relation to the extension sought.

In determining that sufficient reason has in the present instance been shown, I am mindful of the circumstances of the present application, and inspired by **Valerie McGivern v Salim Fakhrudin Dilal** Civil Application No. 11 of 2015 Tanga CAT where it was stated that:

*The law is settled....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 circumstances of each individual case*

All said and considered, I am inclined for the above reasons and observations to find that sufficient reasons have been shown for extension being granted.

In my ruling therefore, I would grant the prayers sought in the chamber summons as I hereby do so. Consequently, the extension of time is hereby granted for the applicants to file appeal against the decision of the trial tribunal out of time and in particular within 30 days of the ruling. In the circumstances, I will award the applicants costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 12<sup>th</sup> day of July 2021.

  
.....  
**Benhaji S. Masoud**  
**Judge**

