

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

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 58 OF 2021

ASHA NAKUYOMA.....APPLICANT

VERSUS

JUMA MMBAGA.....RESPONDENT

RULING

23/06/20 & 12/07/2021

Masoud, J.

The applicant is seeking extension of time within which to appeal to this court against the decision of the District Land and Housing Tribunal (the district tribunal) exercising its appellate jurisdiction.

The application was made under section 38(1) of the Land Disputes Courts Act, cap. 216 R.E 2019 and was supported by an affidavit of the applicant. The application was opposed by the respondent who filed a counter affidavit against the application. The application was conducted by filing of written submissions pursuant to a schedule set by the court and which was dutifully complied with.

The applicant's affidavit as is the written submission in chief filed on behalf of the applicant by Mr Ngalaba Abel, hinged the appeal on the ground that she filed her petition of appeal within time at the district tribunal as is required by the law. However, the appeal was refused for reason that it was not accompanied with the decree of the judgment sought to be appealed against. As a result, she filed another appeal before this court where she was advised that the appeal was not properly filed as was to be lodged before the district tribunal as is required by the law. She was, therefore, advised to withdraw the same of which she did.

As she was already out of time, she had to file the present application for leave to appeal out of time. She attributed the delay to the above reasons which were not associated with any negligence on her part. In her written submissions, the applicant argued that the refusal of his appeal on the ground that it was not accompanied with the decree was an illegality which mandates this court to exercise its discretion in favour of the extension.

In line with the above argument, the applicant referred the court to **Gregory Raphael vs Pastory Rwehabula**, Civil Appeal No. 30 of 2000 in relation to the absence of a requirement of attaching a decree in

a petition of appeal; and **VIP Engineering and Marketing Ltd and Others vs Citibank (T) Ltd**, Consolidated Civil Reference No. 6, 7 and 8 of 2005 in relation to illegality as a sufficient reason for granting extension. With such reasons and arguments, she invited the court to exercise its discretion in her favour.

Despite the apparent weaknesses in the counter affidavit of the respondent, it seemed to me that the message that the respondent wanted to put across was that there were no sufficient reasons shown for the court's discretion to be exercised in favour of extension of time. In his written submission in reply, the respondent challenged also the alleged ground of illegality and violation of right to be heard saying that they were not alleged in the applicant's affidavit. Nonetheless, the respondent in his counter affidavit did not dispute the contents of paragraph 9 and 10 of the applicant's affidavit in any way. These were the paragraphs of the applicant's affidavit which disclosed the materials on basis of which the court was being asked to exercise its discretion in favour of extension of time.

The contents of paragraphs 9 and 10 of the applicant's affidavit had it that and I quote:

9. That I appealed to the High Court Land Division within time by lodging the appeal at the District tribunal as the law directs but it was refused in the ground that it was not attached with the judgment and decree of the District tribunal. A copy of such appeal refused by the District Land and Housing Tribunal chairman is attached hereto as annexure marked AN-3 and leave of this Honourable Court is craved as to form part of this affidavit.

10. That when the appeal was scheduled for hearing, the court suo motto advised me and my lawyer to withdraw the appeal and filing at the District tribunal as per the requirement of the law and the fact that filing afresh at the District will be out of time hence I was advised to seek leave first before this honourable court.

With respect to the contents of paragraph 9, there was a copy of the petition of appeal referred by the applicant. There are some handwritten inscriptions on the copy of the petition to the effect that:

*"Hakuna Jufgment na decree....Rufaa
hajakubalika....Not admitted.
Sgd
14/12/2019"*

The forgoing notwithstanding the respondent's written submission in reply supported the contents of paragraph 10 of the affidavit as to the appeal which was filed in this court but had to be withdrawn because it was supposed to be lodged before the District tribunal. With this and the fact that the averment by the applicant was not specifically disputed, I

think I have no reason why I should not take the applicant's averment as the truth.

However, while the order of this court which marked the appeal withdrawn was apparently made on 20/10/2020, the present application was presented for filing in this court on 04/02/2021. It was so filed after the lapse of about three and a half months. I looked at the applicant's affidavit, but I could not find anything accounting for this period in any way.

One of the conspicuous features of the said affidavit is the apparent lack of important dates which would have enable^d the court to determine the period of delay and ascertain whether the same has been accounted for as required by the law. As such, it remains unclear as to why the applicant could not file the application for extension of time immediately after the order. The delay of a period of three and a half months is in the circumstances inordinate.

With the foregoing, I am settled in my mind that the applicant in the circumstances did not act diligently. She did just sit back and relax after obtaining the order withdrawing his appeal upon revelation that the same was filed in this court instead of the district tribunal. If I may add

the allegation of illegality was taken by the applicant out of context and
it was more importantly ^{clearly} not pleaded in the affidavit.
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In my conclusion, the applicant did not show sufficient reasons to
warrant this court to exercise its discretion in favour of granting the
extension of time sought. It is accordingly dismissed with costs.

It is so ordered.

Dated and Delivered at Dar es Salaam this 12th July 2012


B. S. Masoud
Judge

