

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

MISCELLANEOUS LAND APPLICATION NO. 83 OF 2021

**PETER NYANTAHE.....APPLICANT
VERSUS
FREDRICK NGAKUKA.....RESPONDENT**

Last Order: 25/06/2021

Date of Ruling: 02/07/2021

RULING

B.E.K. MGANGA, J

On 18th February, 2021 the Applicant filed this Application seeking extension of time within which to appeal to this court against the decision of the District Land and Housing Tribunal for Ilala that was delivered by Mgulambwa – Chairperson on 2nd December 2020 in Misc. Application No. 412 of 2020 originating from Application No. 67 of 2017. The application is supported by an affidavit of Peter Nyantahe, the Applicant. On 2nd May, 2021, the Respondent filed a joint count affidavit to resist the application.

On 25th June, 2021 when the application was called for hearing, Mr. Raymond Uisso advocate for the Applicant adopted the affidavit by the Applicant and argued that on 2nd December 2020 the District Land and Housing Tribunal for Ilala dismissed application No. 412 of 2020 that was filed by the Applicant seeking extension of time to set aside an exparte judgment. Being aggrieved with that decision on 7th December 2020 the Applicant wrote a letter to the Tribunal praying to be supplied with

proceedings and judgment for appeal purposes. He argued that the same was not supplied to him in time. That on 14th January 2021 the Applicant wrote a reminder letter as a result he received the ruling on 29th January 2021 while already out of time. For these reasons, he prayed the application be granted.

Mr. Yumatadei Paul, Advocate for the Respondents, objected the application submitting that the Applicant was negligent and that he was not serious in prosecuting his case. Counsel for the Respondents submitted that the application No. 412/2020 the subject of this application, was an application for extension of time to set aside an *ex parte* judgment delivered on 27th May 2019. He submitted further that Application No. 412/2020 was filed almost after one year which is why, the Tribunal dismissed it for lack of merit. He went on that the ruling in Application No. 412 of 2020 was supplied to the Applicant on 29th January 2021 but he (the Applicant) filed this application on 18th February 2021 that is 20 days thereafter. Counsel for the Respondents criticized the Applicant for not being serious and that he failed to account for delay by 20 days after being supplied with the ruling. Counsel submitted that, after exclusion of the days he was waiting to be supplied with the copy of the ruling in terms of section 19(2) of the Law of Limitation Act, [Cap. 89 R.E. 2019], 45 days within which to file his appeal was ending in **March 2021** but he chose for this application. He concluded by praying application be dismissed with costs for lack of good grounds for extension of time.

In reply to the submission by counsel for the Respondent, the counsel for the Applicant submitted that section 19(2) of the Law of Limitation Act [Cap.89 R.E. 2019] is not certain whether time spent waiting for correction of ruling/judgment can be excluded or not. He was of the view that once time is expired, an application has to be made. He reiterated that the Applicant received a copy of ruling on 29th January 2021. He was quick to point that the Applicant spent 20 days in preparation of this application. He conceded that the Applicant was supposed to account for each day of delay and that there is no paragraph in the affidavit of the Applicant that has accounted for the said 20 days after he was supplied with the copy of the ruling. He maintained his prayer for the application to be granted.

Counsel for the Applicant has submitted that section 19(1) of the law of Limitation [Cap. 89 R.E. 2019] is not certain on exclusion of the period one is waiting to be supplied with a copy of ruling, judgment or decree. That submission, in my view, is not correct, those days are excluded.

I am alive to the principle that extension of time is discretion of the court and that, the discretion has to be exercised judiciously. The court of Appeal in the case of ***Lyamuya Construction Company Ltd. Board of Registered Trustees of Young Women's Christian Association of Tanzania, CAT – Civii Application No.2 of 2010 (unreported)*** propounded important conditions that has to be considered by the courts in determination applications for extension of time as follows:-

“(a) The applicant must account for ali

the period of delay

(b) The delay should not be inordinate


***(c) The applicant must show diligence
and not apathy, negligence or
sloppiness in the prosecution of the
action he intends to take***

*(d) If the Court feels that there are other
sufficient reasons, such as the existence of a
point of law of sufficient importance, such as
illegality of the decision sought to be
challenged."*

Now, in applying the above conditions to this case, I have found that the Applicant has failed to account for the 20 days of delay after being supplied with the copy of the ruling. The argument that the Applicant spent 20 days in preparation for this application is not born in his affidavit as such, these are words from the bar that cannot be treated as evidence. Counsel for the Applicant conceded that 20 days after being supplied with the ruling are not accounted for in the affidavit of the applicant. For the foregoing, and in exercise of discretion, the application is dismissed without costs.

It is so ordered.




B. E.K. Mganga
JUDGE
2/07/2021