

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.88 OF 2019

*(Arising from the decision of the District Land and Housing
Tribunal for Temeke in Land Appeal No.27 of 2016 dated 09.11.2016)*

SENGA OMARY KAWAMBWA APPLICANT

VERSUS

TUMAINI KIMWAGA RESPONDENT

RULING

Date of last Order: 05.07.2021

Date of Ruling: 22.07.2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 38 (1) (c) of the Land Disputes Courts Act, Cap, 216 [R.E 2019] to extend the time within the applicant to file an appeal out time against the decision of Temeke District Land and Housing Tribunal in Land Appeal No. 27 of 2016. The application is supported by

an affidavit deposed by Senga Omary Kawambwa, the applicant. The respondents did not oppose the application for an extension of time.

When the matter was called for hearing before this court on 05th July, 2021 the applicant appeared in person, unrepresented and the respondent enjoyed the legal service of Ms. Mulebya, learned counsel. The respondent learned counsel in his submission had no time to waste, he went straight to the point that they concede with the applicant's application.

I have given due consideration to the submissions of both learned counsels, whereby the learned counsel for the respondent has conceded the applicant's application. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of

its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few. Mr. Binamungu in his submission convinced this Court to find that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra).

I have gone through the applicant's affidavit and found that the applicant's Advocate has accounted for the delay in paragraphs 4, 5, 6, and 7 of his affidavit. The applicant stated that the applicant was dissatisfied with the decision of the District Land and Housing Tribunal for Temeke hence he filed an appeal before this court which was dismissed on 6th July, 2018 for being incompetent. Thereafter he wrote a letter to the District Land and Housing Tribunal for Temeke requesting for correction. In September 2018 the applicant received copies of the drawn order of this court and a copy of the judgment and decree of the District Land and Housing Tribunal for Temeke. The applicant went on to state that on 12th September, 2018, he managed to file an application for extension of time to file an appeal out of time before this court, however, the same was

struck out with leave to refile filed a Misc. Application No. 337 of 2020 and on 15th September, 2020 the said application was struck out by this court on 12th December, 2018. Thus he decided to file the present application for extension of time to file an appeal out of time against the District land and Housing Tribunal. I can see that the applicant's delay was technical. The technical delay is well elaborated in the above-cited case of **Fortunatus Masha** (supra) that the technical delay is in the sense that the original appeal was lodged in time but the same was found incompetent thus fresh appeal has to be instituted.

Having unflinchingly reviewed the depositions in the affidavit and considering that the respondent concedes to the application. I am convinced that this case fits in the mold of cases for which extension of time on the ground of technical delay may be granted. Circumstances of this case reveal sufficient cause capable of exercising the Court's discretion and extend the time within which to file an application to lodge an appeal with a view to appeal to this court.

For the aforesaid reasons, I proceed to grant the applicant's application to lodge a Notice of Appeal with a view to appeal to the Court of Appeal of Tanzania within 30 days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 22th July, 2021.


A.Z.MGEYEKWA

JUDGE

22.07.2021

Ruling delivered on 22th July, 2021 in the presence of both learned
counsels.


A.Z.MGEYEKWA

JUDGE

22.07.2021

