

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 167 OF 2020**

*(Arising from the Ruling and Order (Drawn Order) of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Land Application No. 382 of 2016, and Misc. Application No. 496 of 2018)*

**ELIZABETH BALALI .....APPLICANT**

**VERSUS**

**DEODATA ELIAS .....RESPONDENT**

**RULING**

Date of Last order: 18.08.2021

Date of Ruling: 26.08.2021

**A MSAFIRI, J**

Elizabeth Balali, the applicant herein filed this application before this court seeking the extension of time within which to lodge an appeal in this court against the decision given and delivered by Honorable Lung'wecha, Chairman on the 09<sup>th</sup> January, 2020 in Misc. Application No. 496 of 2018 District Land and Housing Tribunal for Kinondoni District at Mwananyamala.

The application was made under section 38(1) of the Land Disputes Courts Act, [Cap 216 R.E. 2019] section 95 of the Civil Procedure Code [Cap 33 R.E. 2019], Section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2019] and is supported by the affidavit of Sauli Santo Makori the advocate for the applicant.

In this application the applicant was represented by Sauli Santu Makori, Advocate, whereas the respondent was represented by Raphael Lefi David, Advocate.

Hearing of the application was by way of written submissions, whereas the applicant's advocate started his submission by praying to adopt the contents of his affidavit to form part of the applicant's submission. He submitted that the applicant is applying to this court to grant extension of time to file her appeal before this court out of time, and other orders as it deems appropriate in the circumstances.

Counsel for the applicant submitted that, the reason for the applicant's delay to file this application was due to serious sickness of her counsel Heavenlight P. Bethuel suffering from diabetes which resulted to his death on 15/03/2020. And that the applicant instructed her counsel to stand on her behalf, and was not aware of his counsel's sickness which resulted to his failure to attend the trial tribunal that resulted to the dismissal of application No. 382 of 2016 for want of prosecution on 30/01/2017.

Counsel for the applicant submitted that the said dismissal was entered when the late Advocate was under serious situation which resulted to failure to lodge application for setting aside dismissal order on time, which necessitated the need for him to file Misc. Application No. 496 of 2018 seeking among others, the extension of time to file Application for setting aside dismissal order, which was also dismissed on 09/01/2020 before Hon. Lung'wecha, Chairman, for not disclosing sufficient reason for her absence.

Therefore that her delay was due to her Counsel's sickness at the entire period of the two dismissed applications. And that after the burial of her

late counsel, on 25/03/2020 is when the applicant paid a visit to the presiding Advocate, Sauli Santu Makori to take over the matter and it is the one applied for obtaining the ruling and drawn order for Misc. Application No. 496 of 2018 and obtained the same on 26/03/2020 as per annexure EB-4.

That counsel for the applicant requested for file perusal on 26/03/2020, and that on 01/04/2020, counsel for the applicant succeeded to file this application. He stated that the applicant still have the intention to proceed with the Land Application No. 382 of 2016 on merit for interest of justice and the right to be heard as well as right to property.

He further submitted that there was no negligence to the appellant's side but the situation was out of her control. And that after obtaining the certified copies of ruling and drawn order, he noted that there is a need to apply for extension of time and challenge the said decision because there are serious issues to be determined by the appellate court on the issue of ownership of the landed property.

He contended that, this application contain sufficient reasons to convince this court to grant extension of time to file an appeal against the decision of the trial tribunal as it was held in the case of **Republic vs. Yona Kaponda and 9 Others [1985] TLR 84** which held that,

*"...as I understand it "sufficient reasons" here does not refer only and is not confined to delay. Rather it is sufficient reasons for extending time, and for this I have to take into account also the decision intended to be appealed against , the surrounding circumstances, and the weight and implications of the issue or issued involved..."*

And that this application fits to four criteria set in the case of **Addija Ramadhani (Binti Pazi) vs. Sylvester W. Mkama, Civil Application No. 13/17/18**, which ruled out that extension of time will be granted upon resolving the following:-

- a) The length of the delay*
- b) The reasons for delay*
- c) Whether there is an arguable case such as, whether there is a point of law on the illegality or otherwise of the decision sought to be challenged*
- d) The degree of prejudice to the defendant if the application is granted "*

In that regard Mr. Sauli submitted that neither way the respondent may be prejudiced.

In response, counsel for the respondent Mr. Raphael Lefi David submitted that the applicant's application for extension of time has no sufficient reasons since she is the one who instituted Land Application No.382 of 2016 and left it unattended which resulted to its dismissal on 30/01/2017.

He stated further that, the applicant again filed application No. 496 of 2018 requesting Kinondoni District Land and Housing tribunal to extend time for her to set aside the dismissed Land application No. 382 of 2016, in which the applicant failed to convince the Tribunal with sufficient reasons, the same was dismissed on 09/01/2020 yet the applicant did not appeal to the same on time.

The counsel argued that the applicant wrongly cited Section 38(1) of the Land Dispute Court Act, [Cap 216 R.E. 2019] as enabling provision to move the court because the said provision relates on appeals originating from Ward Tribunals. He further submitted that although the applicant cited section 14 of the Law of Limitation Act, [Cap 89 R.E. 2019] as enabling provision, still did not indicate the subsection she was referring since section 14 contains subsections (1) and (2).

Besides, Mr. Raphael was of the view that section 95 of the Civil Procedure Code [Cap 33 R.E. 2019] is applicable where there is no clear provision of the law specifically providing for such act. In that sense, he asserted that the applicant has wrongly moved the court and that its consequences is fatal leading to the denial of the applicant's application. And that the applicant has totally failed to account for every day of the days delayed.

He cited the case of **Ratnam vs. Cumarasamy (1965) 1wlr 8**, whereby the Privy Council observed that;

*".....The rules of court must prima facie be obeyed, and in order to justify a court in extending the time during which some step in a procedure requires to be taken there must be some material upon which the court can exercise its discretion"*

Again, he argued that no illegality has been proved by the applicant to have been done by the trial Tribunal. Therefore, this application lacks merits and should be dismissed with costs.

In rejoinder, Counsel for the applicant further submitted that Section 3A and 3B of the Civil Procedure Code [Cap 33 R.E.2019] provides for the overriding objective principle that can cure the wrongly cited section 38(1)

of the Land Dispute Court Act and that the citation of the provision does not in any way prejudice the respondent. He cited the case of the Court of Appeal **Mondorosi Village Council & 2 Others vs. Tanzania Breweries Limited & 4 Others Civil Appeal No. 69 of 2017 at page 11** in which the Court was invited to do away with technicalities and dispense justice for the errors which does not go to the root of the case or matter.

Having gone through the entire submissions it appears to me that both application No. 382 of 2016 and Application No. 496 of 2018 were at different time dismissed by the trial Tribunal at the applicant's defaults.

It appears also that the applicant had completely surrendered her case to her Advocate to stand on her behalf, unfortunately her Advocate fall seriously sick for long time and failed to take necessary steps regarding the applicant's case, including failure to obtain the copies of Ruling and Drawn Order on Application No. 496 of 2018 which was dismissed on 09/01/2020.

The applicant's Advocate died on 15/03/2020, however no medical chit is attached to this application nor death certificate of the said Advocate Heavenlight P.Bethuel. However the fact of advocate's sickness and death was not disputed by the respondent in anyway.

It appears to me that the death itself of the said Advocate is a proof that the Advocate was unstable to make follow-ups on the applicant's case, and that instability resulted to his death, and that's why immediately after the demise of Advocate Heavenlight, the applicant marched to the presiding Advocate Mr. Sauli Santu Makori on 25/03/2020, 10 days from the death of the previous Advocate.

In fact the presiding Advocate upon being instructed by the applicant started acting immediately including requesting for copies of Ruling and Drawn Order on Application No. 496 of 2018 as per **Annexure EB-4** dated 26/03/2020 attached to the applicant's affidavit.

Though it is not clear after requesting, when the copies exactly was supplied to the applicant's counsel, but the ruling itself on Application No. 496 of 2019 seems to have been certified by the trial Tribunal on 13/03/2020. That is to say it was two days before the death of Advocate Heavenlight, it makes sense, that no way the ailed advocate could have made it to obtain the copies in such a serious situation nor act in anyhow. Therefore the delay in such situation was out of the Applicant's control.

However section 19 of the Law of limitation Act, (supra), provides for time in computing the period of limitation as follows;

*19(1); "in computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded. (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

That is to say the applicant cannot be blamed on the days she had not been supplied with the copies of ruling and drawn order of the after requesting trial Tribunal and if the presiding Advocate requested for copies on 26/03/2020 it is obvious was not having the same.

Regarding the issue of cited enabling provision section 38(1) of the Land Dispute Act, Cap 2016, section 14 of the Law of Limitation Act, Cap 89 and section 95 of the Civil Procedure Code Cap 33 appears to be not fatal and can be cured under overriding objective principle as it was held by Opiyo, J. in the case of **Hasira Mgeni vs. Kigoda Abas Kigoda Misc. Land Application No.183 of 2019** where she stated that;-

*"In my view, in consideration of overriding objective principle which enjoins the courts to do away with technicalities and decide justly....."*

Again in the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph, Civil Appeal No.55 of 2017** The Court of Appeal ruled out that at page 13 that;-

*"With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 [ACT No.8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice...."*

The only wrong cited provision is section 38(1) of the Land Dispute Court Act Cap 216 R.E 2019 in that regard it is true as it has been argued, by counsel for the respondent, that the said section was wrongly cited, however I find it not wise to leave out other provisions correctly cited and concentrate on one wrongly cited provision.

Besides, under Article **107(2) (e) of The Constitution of The United Republic of Tanzania of 1977** it is provided that;

*"Katika kutoa uamuzi wa Mashauri ya madai na jinai kwa kuzingatia sheria, mahakama zifuate kanuni zifuatazo, yaani:*



*(e) kutenda haki bila kufungwa kupita kiasi na masharti ya kiufundi yanayoweza kukwamisha haki kutendeka.”*

So long as the grant of extension of time is the discretion of court, just for the interest of justice, I find it sound that the grant of extension of time to the applicant would in neither way prejudice the respondent. In such circumstances I grant the application for extension of time to the applicant in which the applicant has to lodge the intended appeal within 30 days from the date of this ruling.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI,  
JUDGE  
26/08/2021**