

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

MISC. LAND CASE APPLICATION No. 530 OF 2019

TIMOTHY SIMON FASHA.....APPLICANT

VERSUS

DAVID JOSEPH HANGO.....RESPONDENT

Date of last Order: 05.07.2021
Date of Ruling: 16.08.2021

RULING

V.L. MAKANI, J

The applicant has moved this court under rule 8 (1) and (2) of the Advocates Remuneration Order, 2015, GN No. 264/2015 and section 14 (1) and (2) of the Law of Limitation Act RE 2002 (sic) seeking for extension of time to file Reference to the Judge of the High Court against the Ruling Delivered ON 03/06/2019 in Misc. Application No.119 of 2016 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala (the **Tribunal**). The application is supported by the affidavit sworn by Francis Pius, Advocate for the applicant.

The court ordered this matter to proceed by way of written submissions. Mr. Francis Pius, Advocate drew and filed the main submission on behalf of the applicant. The reply on behalf of the respondent was drawn and filed by Dr. Lugazia, Advocate.

Submitting in support of the application, Mr. Pius prayed to adopt the contents of his affidavit. He said that after the delivery of the impugned ruling (03/06/2019) the applicant applied for the copies of the same on 18/06/2019 so as he can take necessary measures. He said that the applicant was not supplied with the copies until when the statutory period of 21 days within which to file reference had lapsed. He said that by counting 21 days from 03/06/2019 when the decision was delivered the time lapsed on 24/06/2019. That the applicant acted promptly in pursuing the application for reference but was delayed by the Tribunal as the copies of the ruling were lately supplied. He prayed for this application to be granted.

In reply, Dr. Lugaziya prayed to adopt the contents of the counter affidavit and added that it is the cardinal principle of the law that extension of time will only be granted if the applicant shows good cause for delay. That there is no hard and fast rule as to what

amounts to good cause. He said that the copy of the ruling was ready for collection on 15/06/2020 and that if the applicant was making a regular follow up he cannot say that he was aware of the ruling on 30/08/2019. He said the applicant must not only state that he wrote a request letter but must also show diligence in following up. He further said common sense will only show that the applicant became aware on 30/08/2020 shortly after he was to travel, but unfortunately, he has not accounted for the previous 45 days. He relied on the case of **Mohsin Mohamed Taki Abdallah vs. Tariq Mirza, Civil Application No.100 of 1999, (CAT)** (unreported) in which the Court among other things observed that the parties concerned must exercise diligence in the conduct of their cases otherwise they cannot escape blame. He prayed for this application to be dismissed.

In rejoinder Mr. Pius reiterated his main submission and added that Counsel for the applicant has made some reference on submission and authorities cited during the hearing of the preliminary objection. He said that the same is unprocedural and against the court practice and therefore should be disregarded.

Having considered the affidavits and submissions from both parties, the main issue for determination is whether this application has merit.

The main reasons adduced by the applicant for his delay to file reference is that the copies of the impugned decision were not supplied in time by the Tribunal. That the decision was delivered on 03/06/2019 and he made a request for the copies on 18/06/2019 but was not supplied with the same until the time to file the application reference had lapsed.

The records are very clear that the impugned decision was delivered on 03/06/2019, the request for the copies through a letter was made on 18/06/2019. Time to file the reference lapsed on 24/06/2019 and the copies were certified ready for collection on 15/07/2019. It is more than 21 days from when the applicant wrote a request letter to the Tribunal to the date when the copies were ready for collection. Therefore, it is evident that the Tribunal delayed in supplying the applicant with the copies of the impugned decision. However, this application was filed on 13/09/2019, almost more than 57 days from when the copies were made available for collection. Counsel for the applicant alleges that on diverse dates of 02/09/2019, 04/09/2019

and 05/09/2019 to 07/09/2019 he travelled to Mwanza and Arusha for hearing of cases and attending Tanganyika Law Society Half Annual General meeting. However, Counsel has not stated what transpired between 15/07/2019 when the copies of the ruling and judgment were ready for collection to 02/09/2019 to 07/09/2019 when he went to Mwanza for cases and Arusha for the TLS Meeting. Counsel did not state what he did after his return on 02/09/2019. Further there is no proof that Counsel went to Arusha for the TLS Meeting. The TLS receipts are not tickets so they could have been retrieved by any Advocate on behalf of Mr. Francis Pius, as such there is no proof of travel of Mr. Pius to the TLS Meeting. In summary, Counsel has failed to account for the delay from 15/07/2019 to 02/09/2019 and from 02/09/2019 to 13/09/2019 when this application was filed. The law is very clear that an applicant for extension of time should account for each single day of delay. See the case of **Bushir Hassan vs. Latifa Lukiko Mashayo, Civil Application No. 3 Of 2007** (unreported) where the Court of Appeal held that:

" Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".

Apparently, the applicant has failed to account for the delay of more than 50 days and in my view, this is inordinate delay, and no sufficient reason has been duly advanced to warrant extension of time. I therefore proceed to dismiss this application with costs for want of merit. It is so ordered.


V.L. MAKANI
JUDGE
16/08/2021

