

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

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPLICATION NO. 195 OF 2021

(Arising from Land Application No. 7 of 2018 of the District Land and Housing Tribunal of Morogoro)

VICTOR S. MAHIMBO.....APPLICANT

VERSUS

LUCIANA KIKOTI.....1st RESPONDENT
MVOMERO SACCOS LTD.....2nd RESPONDENT

RULING

29/07/2021 & 15/09/2021

Masoud, J.

The applicant filed the present application seeking extension of time within which to file her intended appeal out of time. The application was understandably made under section 41(1) and (2) of the Land Disputes Courts Act, cap. 216. The affidavit supporting the application defined the period of the delay as from 25/02/2021 when the trial tribunal delivered the impugned judgment to 05/04/2021 when the applicant decided to file his appeal using the online filing facility of the judiciary as evidenced by an e-print out annexed to his affidavit. The affidavit had it that when the appeal was then filed using the online facility, a total of forty (40) days had already expired if one were to count from the day on which the impugned judgment was delivered.

The applicant also averred in the affidavit that despite filing the appeal on 05/04/2021, the status remained as "waiting for admission". His follow up was of no avail as he was told that the case could not be seen and was not therefore pending for admission before this court. He averred further that a further follow up revealed that the case was sent to Dodoma High Court Land Division.

With such position, he was made to understand that the appeal could not be remitted to this court and was advised to refile the appeal afresh in this court. As there was already a delay of nine (9) days after the expiry of forty five (45) days when he was acquainted with such position, he could not do anything further other than filing the present application for extension of time. The applicant also stated that the delay was not deliberate.

The application was opposed by the respondent who filed a counter affidavit. Essentially, the respondent in the said counter affidavit maintained that the applicant did not account for the delay and did not adduce sufficient reasons for the delay.

The application was argued by filing of written submissions. Parties complied with the filing schedule set by the court. The rival submissions

at best revisited the general principles of the law relating to granting of extension of time and the exercising of the discretionary power of the court in such applications. Indeed, relevant authorities were cited and relied upon. I need not reproduce the authorities here at any length.

My scrutiny of the evidence of the parties as shown in their respective affidavit and counter affidavit and as expounded in the respective submissions convinced me that the applicant has provided the court with relevant materials on the basis of which discretionary power of this court can be exercised in the favour of the extension sought.

In line with the above, I was mindful of a good number of authorities on the jurisprudence that has thus far evolved on the law relating to extension of time, and on what the court should consider in exercising its discretion in the favour of extension. The authorities included **Aknaay Sidewa v Lohay Baran**, Civil Application No. 25/02 of 2016; **Dr A. Nkini & Associates Ltd v National Housing Corporation**, Civil Appeal No.72 of 2015; **Republic v Yono Kaponda and 9 Others** [1985] TLR 85; **Shah and Brothers v Kumar J. N. Bora** [1961] EA 679; **THA vs Mohamed R. Mohamed** [2003] TLR 77 (CA); and **Cosmas Construction Co. Ltd v Aro Garments Ltd** [1992] TLR 127.

The authorities were, in a nutshell, on various matters and principles relating to application for extension of time. The principles, for instance, included those relating to what amount to extension of time, effect of failure to disclose important information in enabling the court to gauge the extent of delay, negligence of advocate of a party seeking extension, inordinate delays as shown above on the settled position of the law.

I was clear that the applicant was not just idling. Although he did not attach the letter he used to request for a copy of the impugned decision, he produced the printout evidencing the e-filing of his appeal on 05/4/2021, before the expiry of the forty five (45) days' time limit. The respondent had nothing to say about the print out and on the averment that the appeal was filed within the time, other than saying without giving any reason, that the alleged facts are not admitted.

In the end, and on the strength of the reasons adduced in the affidavit made in support of the application, I hereby grant the application. Consequently, the applicant is given thirty (30) days within which to file his intended appeal. As the applicant did not press for costs in his chamber summons, I will not make any order as to costs. Ordered accordingly.

Dated and Delivered at Dar es Salaam this 15th day of September 2021.



B. S. Masoud
Judge

