

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

MISC. LAND CASE APPLICATION NO. 285 OF 2020

(Originating from the District Land and Housing Tribunal for Temeke District at Temeke in Misc. Land Application No. 224 of 2017 and arising from Land Application 190 of 2018)

KHATIBU OMARY DANGI APPLICANT

VERSUS

1. ALLY MASOUD	} RESPONDENT
2. MACHOWIA MALISA		
3. MBARAKA MIRAJI		

RULING

Date of Last Order: 15/06/2021 &
Date of Ruling: 06/08/2021

S.M KALUNDE, J:-

This ruling resolves an application made by KHATIBU OMARY DANGI, the applicant herein. The application is preferred under **order 7 (1) and (2) of the Advocates Remuneration Order, 2015 G.N. No. 264 of 2015**. The applicant is seeking an extension of time within which to file reference out of time against the decision of the District Land and Housing Tribunal for Temeke District at Temeke ("the tribunal") in **Land Application 190 of 2018**. The application is supported by a five (5) paragraph affidavit affirmed by the applicant.

In response, the respondents filed a joint counter affidavit affirmed by their learned counsel, **Ms. Shamimu Kikoti**. The respondents denied the applicants claims on the ground that the applicants have not demonstrated good cause for the application to be granted.

The brief facts leading up to the present application as may be gleaned for the pleadings and submissions are that: the applicant was successful in **Misc. Land Application No. 224 of 2017** at the tribunal. Subsequent to that, he filed an application for Bill of Cost through Land Application 190 of 2018 claiming costs to the tune of Tshs. 47,750,800.00 as costs arising from Misc. Land Application No. 224 of 2017. The taxing officer taxed the costs at Tshs. 1,094,000.00. The applicant was dissatisfied with the decision of the taxing office, instead of filing reference to this Court, he filed an appeal. The appeal was registered as **Land Appeal No. 194 of 2019**. On 20th April 2020, this Court (**Hon. Makani, J**) struck out the appeal for being incompetent. The applicant, then filed the present application.

Hearing of the application was conducted through written submissions. The applicant was unrepresented, so he fended himself. **Ms. Shamimu Kikoti**, learned advocate prepared and filed submissions of the respondents. Submissions in chief and reply submissions were dully filed in compliance with Court orders. However, the applicant did not file his rejoinder within the prescribed time limit. Hence, the present ruling.

In order to appreciate the gamut of the submissions advanced, it is imperative to extract hereunder, the content of the affidavit filed in support of the application. The same are accordingly reproduced below:

- "1. That, I am applicant in this Application and therefore conversant with facts I am about to depose hereunder.*
- 2. That, sometimes on 20th September 2019 I filed Land Appeal number 194 of 2019 in the High Court Land Division after being aggrieved by decision of District Land and Housing Tribunal for Temeke regarding application for bill of cost No. 190 of 2018.*
- 3. That, on 20th April 2020 your Honourable High Court Land Division SUO MOTTO struck out my land appeal number 194 of 2019 on the ground that I ought to have preferred a reference as provided under Order 7(1)(2) of Advocates Remuneration Order, 2015 (GN. No. 264 of 2015) instead of Appeal.*
- 4. That, I wrote a letter of the ruling of the said land appeal number 194 of 2019 in the High Court Land Division on 29th April 2020 (letter of the request of copy of the ruling is hereby attached to form part of this affidavit) but I was able to receive the same 12th May 2020.*
- 5. That, it is important for the High Court Land Division to extend the time for filing a reference out of mandatory required period of time."*

From the above wording of the affidavit, it would appear that, the main reason for failure to file the appeal on time was delay in being supplied with the decision of this Court in Land

Appeal No. 194 of 2019 which was struck out on 20th April 2020. The applicant submitted that, in terms of order 7 (1) and (2) of **the Advocates Remuneration Order** (supra), he was supposed to file the application for reference within 21 days from the date of the decision. He added that, when Land Appeal No. 194 of 2019 was struck out, he was already out of the prescribed period of limitation, hence the present application. He prayed that the application be granted with costs.

The respondents were brief, theirs was that, in terms of order 8 (1) of **the Advocates Remuneration Order** (supra), the applicant was supposed to show "**good cause**" for the Court to be able to exercise its discretion in extending time. Ms. Kikoti cited the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported) and **Ngao Godwin Losero vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) for the position that in considering an application of the present nature the Court must consider various factors including the length of the delay, the reason for the delay, whether there is an arguable point on appeal and the degree of prejudice to the respondent. The counsel concluded that, the application lacked merit and it ought to be dismissed with costs.

I have dispassionately considered and weighed the rival arguments from both parties. The question for my determination is whether the application is merited. To respond to the stated

issue, I think it will be instructive to state the law applicable in applications of the present nature. As pointed out above the application is brought under orders 7 (1) and (2) of **the Advocates Remuneration Order** (supra). The respective provisions read as follows:

"7.- (1) Any party aggrieved by a decision of the Taxing officer, may file reference to a judge of the High Court.

(2) A reference under order (1), shall be instituted by way of chamber summons supported by an affidavit and be filed within 21 days of from the date of the decision.

In accordance with the above provision, a person aggrieved by a decision of the Taxing officer, may file reference to this Court within 21 days of from the date of the decision. However, the law provides a window for a person who was precluded, by sufficient cause, from filing the application for reference. That window is provided under order 8, which reads:

*"8.- (1) **The High Court may, subject to order 7 extend the time for filing a reference upon sufficient cause.***

(2) An application for extension of time shall be made by way of chamber summons supported by an affidavit and be served to parties at least seven days before for hearing date." [Emphasis mine]

In terms of order 8(1) cited above the applicant is supposed to demonstrate good cause. In disposing this application, I will be

guided by the position of law that, an applicant is required to state the all the relevant materials and grounds for extension in the affidavit filed in support of the appeal. That position was stated in **Helen Jacob v Ramadhan Rajab** (1996) 6 TLR 139 and later in **Kalunga and Co. Advocates v National Bank of Commerce Ltd** (124 of 2005) [2006] TZCA 87; (24 April 2006).

In **Kalunga and Co. Advocates v National Bank of Commerce Ltd** (supra) the Court of Appeal stated:

*"There is no paragraph in Mr. Mhango's affidavit that seeks to explain the reasons, if any, accounting for the 17 days delay. The learned advocate concentrated on explaining the reasons as to why leave to appeal should be granted. Where there is inaction or delay on the part of the applicant, **there ought to be some kind of explanation or material to enable the Court to exercise the discretion** given by Rule 8 of the Court of Appeal Rules."*

I am also alive with the position stated in **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra) where the factors to be considered in looking whether there is good cause were listed. The factors include:

- 1 The applicant must account for all the period of delay.*
- 2 The delay should not be inordinate.*
- 3 The applicant must show diligence, and not apathy, negligence, or sloppiness in the*

prosecution of the action that he intends to take.

4 If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.”

Mindful of the above position, I am satisfied that the present application is not merited, and I will illustrate my position hereunder. **Firstly**, the application in its entirety falls short of very key materials which are necessary for consideration by this Court on whether the applicant has good cause. It lacks materials which show proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For example, it not clear when the decision sought to be challenged (Land Application 190 of 2018) was delivered, the date on which a copy of the drawn order or ruling was requested and the date of the supply of the requested document. Without such information this Court cannot establish, with certainty, whether the applicant has explained away every day of the delay. Unfortunately, no material was attached, not the decision nor letter for request of the decision. Further to that, no information was provided in the affidavit.

Secondly, even assuming that the application, in its present form is competent, there is no sufficient reason advanced to explain the delay between the date when the ruling in Land Application 190 of 2018 was delivered and when the present

application was filed. All the applicant did was to narrate what happened with the wrongly filed Land Appeal No. 194 of 2019 which was eventually struck out. Lest I am misunderstood, I am not saying that narrating what happened in Land Appeal No. 194 of 2019 is irrelevant, but that explanation becomes relevant is explaining why the period involved in Land Appeal No. 194 of 2019 should be discounted. But in the circumstances where there are no materials on the record of the dates of the critical events for the reckoning of the prescribed limitation period, the explanation of what happened in Land Appeal No. 194 of 2019 is obsolete.

All said and done I am satisfied that the applicant has failed to show sufficient cause for the delay to warrant this Court to grant the application. I find the application wanting in merits. It stands dismissed. The respondent shall have his costs.

Order accordingly.

DATED at DAR ES SALAAM this 06th day of JULY, 2021.




S.M. KALUNDE

JUDGE