

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

**MISC. LAND CASE APPLICATION NO. 869 OF 2018**

**STELLA NGONYANI ..... APPLICANT**

**VERSUS**

**1. MERCY MBELE**

**2. TATU MBWANA NJOU**

**..... RESPONDENTS**

**RULING**

Date of Last Order: 08/06/2021 &  
Date of Ruling: 25/06/2021

**S.M KALUNDE, J:**

This ruling resolves an application made by STELLA NGONYANI, the applicant, under **section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019**. The applicant is seeking for extension of time within which to file an appeal out of time against the decision of the District Land and Housing Tribunal for Temeke District at Temeke ("**the tribunal**") dated 30<sup>th</sup> October, 2017 in **Misc. Application No. 136 of 2015**. The application is supported by an affidavit sworn by the applicant. In response the 2<sup>nd</sup> respondent swore a counter affidavit. The 1<sup>st</sup> respondent lodged no counter affidavit in reply.

Hearing of the application was conducted through written submissions which were dully filed in compliance with Court orders. Submissions of the applicant were drawn and filed by

**Elias D. Lugomela**, learned advocate and those of the second respondent were drawn by the 2<sup>nd</sup> respondent herself.

As may be gleaned from the affidavit, the main reason for the delay in filing the appeal is a prayer made by the counsel for the 1<sup>st</sup> respondent to settle the matter out of court. Further to that the applicant alleged that the appeal had overwhelming chances of success.

In support of the application, Mr. Lugomela argued that delay in filing the intended appeal was not the applicant fault but rather a delay in settling the matter out of court after a prayer made by the counsel for the 1<sup>st</sup> respondents at the tribunal. The counsel argued that the prayer to settle the matter out of court prevented the applicant from appealing on time. He argued that a prayer to settle the matter out of court was a sufficient cause for extension of time. In support of that position, he cited the case of **Samson Kishosha Gaba vs. Charles Kingongo Gaba** [1990] T.L.R 133.

Arguing against the application, the 2<sup>nd</sup> respondent opted to adopt the flanking counter affidavit as part of her argument. She went on to argue that the applicant has failed to advance sufficient reason for the Court to exercise its discretion in granting the orders sought. She stated that the applicant has failed to state why he was unable to take steps required by law in filing the appeal. To bolster her position, she cited the case of **Mugo and Another vs. Wanjiru and Another** (1970) EA 481. In addition to that, she argued that claims that delay was

occasioned by a prayer to settle the matter out of court were not backed up by any evidence or affidavit to confirm that parties were in fact engaged in out of court settlement.

In rejoinder the applicant insisted that the failure to file the appeal on time was accessioned by time spent in trying to settle the matter out of court as requested by the counsel for the 1<sup>st</sup> respondent. He added that in the present application the applicants are intending to appeal against the consolidated ruling of the tribunal and not the judgment.

Having carefully examined the pleadings before the Court as well as considered the supporting and opposing submissions made by both parties, it now behooves the Court to determine whether the present application is merited or otherwise.

I will take off by examining the provisions of section 41 (2) of Cap. 216 to which the present application is grounded. In accordance with that section, this Court may, upon demonstration of good cause, extend the time for filing an appeal either before or after the expiration of the 45 days limitation set by law. The section 41 (2) provides that:

*"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:*

*Provided that, **the High Court may, for the good cause, extend the time for filing an appeal** either before or after the expiration of such period of forty five days." [Emphasis mine]*

As it may be scanned from the above section, and as correctly argued by both parties, for the application of this nature to succeed emphasis is placed on the applicant to show “**goo cause**”. However, it should be noted that, the law does not define what amount to “**good cause**”. Case law has it that, extension of time, being a discretion of the Court, it must be exercised judiciously upon consideration of the various factors and circumstances of each case. In **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women’s Christian Association of Tanzania**, Civil Application No. 2 of 2010, (unreported) the Court of Appeal listed factors to be looked at in considering whether good cause exist. They 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; and
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.

In accordance with the affidavit and submission of the parties the decision sought to be challenged was delivered on 30<sup>th</sup> October, 2017. Subsequently, on the 02<sup>nd</sup> November, 2017, the applicant allegedly filed a notice of intention to appeal to this

Court. No appeal was filed as parties were allegedly involved in efforts to settle the dispute out of court. When the settlement efforts turned fruitless the time limit for filing an appeal had elapsed, the applicant brought the present application alleging that, if it was not for the 1<sup>st</sup> respondent's counsel to settle the matter out of court, he may have appealed within the prescribed limitation period. He is therefore praying that this Court condones the delay in filing the appeal and grant him extension of time to file the appeal out of time.

From the records, it is apparent that the decision sought to be challenged was delivered on 30<sup>th</sup> October, 2017. From that date the applicant had 45 days within which to file the appeal. He did not do so, instead he allegedly got involved in of court settlement arrangements, until when the negotiations collapsed and the present application was, subsequently, filed 21<sup>st</sup> November, 2018. There was therefore a delay of almost a year in filing the appeal.

In accordance with the decision in **Lyamuya Construction Company** (supra) the applicant was required to account for every day of the delay. The requirement to account for everyday of the delay has also been emphasized in numerous decisions, such cases include the case of **Bushiri Hassan vs. Latifa Mashayo**, Civil Application No. 2 of 2007 (unreported) and **Karibu Textile Mills v. Commissioner General (TRA)**, Civil Application No. 192/20 of 2016 (unreported).

In **Bushiri Hassan vs. Latifa Mashayo** (Supra), the Court of Appeal stated that:

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

Upon deliberation and consideration of the records and submission made before me, I am not convinced that the applicant has explained away every day of the delay. I will illustrate hereunder.

In the present case, besides establishing the existence of the said out of court settlement, the applicant has failed to explain the duration within which parties were indulged in settlement negotiations, whether by stating when the negotiations began, what happened in the process and when did the negotiation or settlement arrangements fail. It is even not clear, as to when he was supplied with the decision sought to be appealed against. However, given that he filed an application for execution on 07<sup>th</sup> November, 2017, it is clear that, by that date the decision and decree of the Court were ready. He was therefore within time to file the appeal.

It is unfortunate that when parties were involved in the alleged settlement arrangements, the clock for filing the appeal did not stop. It was important that the period in which parties were involved in an out of court settlement was established because that period was important in determining whether that period may be excluded or not. I must say this is not a new

scenario altogether, In **Mufindi Paper Mills Limited v. Ibatu Village Council & 3 Others**, Civil Application No. 532/17 of 2017 (unreported), the Court of Appeal, sitting in Dar es Salaam observed that:

*"I wholly agree that negotiation for an out of court settlement cannot stop effluxion of a prescribed limitation period. Nonetheless, negotiations done diligently to resolve a dispute can be a factor in determining in an application for extension of time whether a delay in acting within the period prescribed time should be condoned or not."*

In the present case the period sought to be condoned is one year. If the applicant was diligent in the prosecution of his appeal, she should have realized, at one point, that the settlement had taken long enough and that she should pursue other remedies. Allowing the unexplained negotiations or discussions to stretch for over a year demonstrates laxity and negligence on the applicants' part. In that view, I can safely conclude that, the period of delay in the present case has not been explained away.

On another limb the applicant relied on the decision of this Court in the case of **Samson Kishosha Gaba** (supra) for an argument that the application ought to be granted as the appeal had chances of success. I have had an opportunity of going through that decision and I think it is distinguishable from the facts of the present case. In that case the Court reasoned that there was good chances of success because the decision of the trial court has some conspicuous errors including the court's

erroneous distribution of the deceased property to his children, deciding the ownership of the houses on plots No. 125 and No.33 Block A, when the administrator had yet to distribute them. There was therefore an apparent illegality in the decision sought to be challenged.

I am also aware of the very settled position that overwhelming chances of success is not a ground for extension of time In **Wambele Mtumwa Shahame vs Mohamed Hamis** (Civil Reference No.8 Of 2016) [2018] TZCA 39; (06 August 2018) the Court of Appeal cited **Shanti vs. Handocha** (1973) EA 2007 where the defunct East African Court of Appeal made a distinction between an application for extension of time and that for leave to appeal. In the cited case, the defunct East African Court of Appeal stated: -

*"The position of an application for extension of time is entirely different from an application for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part but there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospects of success or even that he has an arguable case."*

The Court went on to observe that:

*"The notable criteria in applications for extension of time is to show a good cause and not overwhelming chances of success. In any case, that*



*would amount to considering the appeal's merits."*

For the foregoing reasons, I find and hold that the applicant has failed to explain away every day of the delay sufficient to warrant this Court to exercise its discretion to grant the extension of time sought. I find the application wanting in merits. It stands dismissed. The respondent shall have his costs.

**Order accordingly.**

**DATED at DAR ES SALAAM this 25<sup>th</sup> day of JUNE, 2021.**



  
**S.M. KALUNDE**

**JUDGE**