

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

MISC. LAND APPLICATION NO. 420 OF 2020

*(Originating from the Ruling of the District Land and Housing Tribunal
for Ilala District as Land Application No. 57 of 2018 dated at 17th
September, 2019 before Hon. Bigambo, Chairman)*

PASTORY HENRY
YOHANA KILAVE
RUMISHA NGOLOO } **APPLICANTS**

VERSUS

WEMA GEMA..... **RESPONDENT**

R U L I N G

Date of last Order: 06/09/2021

Date of Ruling: 27/10/2021

A. MSAFIRI, J:

The applicants PASTORY HENRY, YOHANA KALAVE AND RUMISHA NGOLOO applies for extension of time to appeal to this court, against the decision of the District Land and Housing Tribunal of Ilala (the Tribunal) in Land Application No. 57 of 2018 (Hon. Bigambo, Chairman). The Application has been made under section 41 (2) of the Land Court (Dispute Settlement) Act, Cap. 216 as amended by the Written Laws (Miscellaneous Amendments Act) No. 2 of 2016 and section 14 (1) of the Law of Limitation Act Cap. 89 R.E. 2002 and any other enabling provisions of the law.

The Application is supported by the joint affidavit of the applicants whilst the respondent opposed the Application by filing her counter affidavit. By the order of the court, the Application proceeded by way of written submissions. The applicants jointly prepared and filed the submissions in person and were unrepresented, whereas the respondent's submissions were drawn and filed by Godian Anania Mugusi, learned advocate.

The applicants started their submissions by praying for their joint affidavit and the attached documents to form part of their submissions. They pointed that, granting of extension of time or rejecting is a discretionary power of the court provided that sufficient cause for the delay is shown by the applicants.

They relied on paragraphs 3,4 and 8 of their joint affidavit which states that on 20/9/2019 they filed a letter before the Tribunal requesting to be supplied with a copy of the impugned Ruling to enable them to file an appeal which they received on 02/7/2020 and filed the present Application on 05/8/2020 which was within 30 days. A copy of letter dated 20/9/2019 from the applicants to the Tribunal Chairman and a receipt dated 02/07/2020 were attached to the affidavit as annexures KT – 2 and KT – 1 respectively. They argued that failure to file an appeal within the time were not due to their negligence rather it was due to the fact that they received Ruling of the Tribunal out of time. They prayed for the Application to be granted as they have established sufficient cause to allow this court to grant extension of time.

In reply, the respondent through her advocate Mr. Mugusi, opposed the prayers of the applicants stating that the delay was due to negligence. That, the ruling was delivered on 17/09/2019 and its order was extracted

and signed on 03/01/2020. From the date of ruling i.e. 17/09/2019 to the date of extraction of the same i.e. 03/01/2020, a total of 93 days have passed which are not explained away.

The counsel for the respondent challenged the applicant's letter of request for copies of Ruling annexed to their joint affidavit as annexure KT -1, stating that the same was written by a person who is not party to the dispute i.e. one PASTORY ATHANAS and it contains different parties i.e. **(PASTORY ATHANAS & OTHERS vs. WEMA GEMA)**. The counsel argued that, in such circumstances there is no formal application letter which was filed by the applicants herein to request the copies of the Ruling and Drawn Order.

Mr. Mugusi submitted further that, the Ruling and Drawn Order was extracted on 03/01/2020, however, it took them about seven (7) months to lodge this Application as it was filed in this court on 05/08/2020. That the applicants have failed to account for each day of delay and that even if the appeal is heard on merit, it is not likely to succeed due to obvious illegalities which were done before the Ward Tribunal and that is why the Tribunal ordered the matter to be nullified and interested parties to file a fresh case before a competent court. The respondent prayed for the dismissal of this Application with costs.

In rejoinder, the applicants reiterated their main submission and added that they received the copy of Ruling to enable them to file an appeal on 02/07/2020. That Pastory Henry and Kaboya Pastory are one and the same person. That there were mistakes of the names whereas even the respondent herself confused the name of applicant in the objection dated on 08/10/2018 and wrote Pastory Athanas instead of Pastory Henry. The

Applicants asked the court to consider Article 107 A of the Constitution of the United Republic which task the courts not to rely much on legal technicalities but focus on merit of the matter for the purpose of dispensing justice.

I have thoroughly considered the written submissions of both parties and their respective affidavit and counter affidavit. The pertinent issue for consideration is whether the delay in filing the appeal was necessitated by sufficient cause to warrant the prayer for extension of time to appeal to this court. The applicants in their affidavit contends that the delay was prompted by the fact that the appeal documents such as the impugned Ruling and drawn order was availed to them late. That the impugned Ruling was delivered on 17/9/2019 and they immediately wrote a letter requesting for the same to the Tribunal Registry i.e. on 18/9/2019. However, they claimed that the said documents were availed to them on 02/07/2020. The copy of GEP payment receipt which shows payment Bill dated 02/07/2020 done by Kaboya Pastory was annexed to the affidavit. The applicants are using this receipt to show that they paid and receive copy of impugned decision on 02/07/2020. They claim that Kaboya Pastory and Henry Pastory are the same. At the same time, the respondent is adamant that the copy of the drawn order of the impugned Ruling shows that the same was extracted on 03/01/2020.

I have noted to have variation in the names of the first applicant. In the current Application the 1st applicant's name is PASTORY HENRY as it appears in the chamber summons and the applicants' joint affidavit. In the impugned decision of the trial Tribunal, the name is the same i.e. PASTORY HENRY. In the letter for request of copy of the decision,

Application No. 57 of 2018, the request letter shows the parties to be PASTORY ATHANAS & OTHERS vs. WEMA GEMA. The letter is signed by PASTORY ATHANAS. In the GEP payment receipt which was purported to be done by applicant, paying for a copy of Ruling, the receipt has a name of KABOYA PASTORY. In rejoinder, the 1st applicant stated that the name KABOYA PASTORY is also his name. He attached in their reply to the counter affidavit, a copy of an affidavit regarding the names that, KABOYA HENRY and PASTORY HENRY KABOYA are all his names used interchangeably. He also attached a photocopy of vote identification with the name PASTORY H. KABOYA to prove that he was the same person.

It is my view that the variation of names though confusing, they have been explained away by the 1st applicant as herein analysed. Therefore, the court is satisfied that the receipt of payment for the copy of the decision of the trial Tribunal, was done by the 1st applicant on 02/ 7/2020 and for that, it is settled that a requested copy of the impugned Ruling was delivered to the applicants on 02/7/2021.

It is important to note that an appeal against the decision of the District Land and Housing Tribunal has to be accompanied by the decree/drawn order and the judgment or order sought to be challenged. In computing time, the time to file appeal against the decision of the District Land and Housing Tribunal is 45 days from the day the impugned decision was delivered. However, section 19(2) of the Law of Limitation Act, Cap. 89 [R.E 2019], mandates courts to exclude the time a party spent in obtaining the requisite copy of decree or order sought to be challenged in computing time.

So, if the applicants got a copy of the impugned decision on 02/7/2021 and this Application was filed on 05/8/2020 it means that by applying the provisions of section 19(2) of the Limitation Act (supra), the applicants will be within the time. Furthermore, the fact that the applicants delay was due to delay of getting copy of impugned decision, it is hereby considered as a technical delay which is excusable.

For the above reasons, I hereby allow the Application and order the applicants to file the intended appeal within 21 days from delivery of this Ruling. Each party to bear their own costs.

It is so ordered.

Dated at Dar es Salaam this 27th October 2021

A handwritten signature in blue ink, appearing to read 'A. Msafiri', is written above a horizontal dotted line.

A.MSAFIRI
JUDGE.

