

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

MISC. LAND CASE APPLICATION NO. 691 OF 2019

MARIAM MAGUMBO **APPLICANT**

VERSUS

ATHUMANI SALUM MBEGU **RESPONDENT**

(Originating from the Decision of District Land and Housing Tribunal of Ilala in Misc.
Land Application No.237 of 2016 Dated 28th March 2018)

RULING

Date of Last Order: 05/10/2021 &

Date of Ruling: 26/10/2021.

A. MSAFIRI, J

Before me is the Application for extension of time so as to file an appeal against the decision of the District Land and Housing Tribunal for Ilala in Misc. Land Case Application No. 237 of 2016 delivered on 28th March, 2018. The Application is made under Section 38 (1) of the Land Disputes Courts Act Cap. 216 R.E 2019. The Chamber Summons is supported by the affidavit of the applicant Mariam Magumbo. What she averred in her affidavit is that the delay was caused by the District Tribunal for failure to supply the applicant with certified copy of decision on time. On the other hand, Athumani Salum Mbegu, the respondent, is opposing the Application through his counter affidavit that, the copies of the impugned decision were not requested for within the period allowed to make an appeal.

The manner of disposing of an Application was by way of written submissions. Roman Selasini Lamwai appeared for applicant while represented the respondent.

Mr. Roman has submitted in respect of the applicant's affidavit by narrating the historical background of the matter that, the applicant has unsuccessfully filed Misc. Application No. 237 of 2016 applying for extension of time upon which to file Revision out of time. The District Tribunal dismissed the Application for the reason of being overtaken by events. Mr. Roman stated that, it was illegal for the Hon. Chairman to refuse to exercise the powers vested to him by the law and the said illegality committed by the Tribunal needs to be corrected by a superior Court. That it has never been a settled law that execution once effected will hinder the power for District Land and Housing Tribunal to exercise its discretion to extend time within which to file an application for revision. According to him the point of illegality above amount to sufficient cause as provided for under Section 14 (1) of the Law of Limitation Act, Cap 89.

On the other hand, Mr. Oteyo replied the submission above by stating that, it is the applicant who sought a wrong relief. The point of illegality contested by the applicant is with no merit that the Chairman sitting in revisional jurisdiction can evaluates the proceedings, evidence and judgment of the lower court sought to be challenged, but, a Chairman sitting in the Tribunal executing the Ward Tribunal decree has a duty to do according to the law.

On the reason that delay was caused by the Tribunal, Mr. Oteyo stated that, it is the applicant who was late to apply to be supplied with certified decision. And this was caused by her counsel's negligence and mistake to act on time. He further argued that although the applicant

relies on illegality as the reasons for extension, she has failed to account for each day delay.

I have carefully considered submissions and arguments advanced by the contending leaned counsels for and against this Application. Before deciding whether this Application should fail or succeed, I wish to state quite clearly at the outset that an order for extension of time may be granted by the Court in the exercise of its discretionary powers. I respectfully adopt the reasoning of the Court of Appeal in the case of **Yusufu Same and Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002** (CAT-unreported) where the Court said;

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judiciously, and the overriding consideration is that there must be sufficient cause for so doing. What amounts to sufficient cause has not been defined. From decided cases, a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on the part of the applicant, does not amount to sufficient cause".

In addition, I should also say that the grounds upon which an order for extension of time may be granted or otherwise would also depend on the individual circumstances of the case under consideration. These grounds differ from one case to another depending on the circumstances of each particular case. In the case of **Felix Tumbo Kisima vs. TTCL and Another (1997) TLR 57** that:

"It should be observed that "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all the reasons or cause which are outside the applicant's power to control or influence, resulting in delay in taking any necessary steps."

According to the Application before me, the main reasons for prayer for leave of extension of time to file appeal to this court are found under paragraph 5, 6 and 10 of the applicant's affidavit and those reasons being thus; **first**, illegality on the sense that the District Tribunal vacates its power by ruling that the intended Application for Revision is overtaken by event, and **second**, is the failure by the District Tribunal for availing the applicant with certified copy of Ruling on time for appeal purpose.

Before going further, I am aware that the intended decision to be appealed against to this Court is the Misc. Land Application No. 237 of 2016 dated 22nd October 2019 under the said Application, the applicant applied to be extended with time to file revision of the decision of Majohe Ward Tribunal in case No. BK/AR/MJ/MSP/K/153/2015 dated 26/11/2015. Therefore, the intended appeal originated from the District Tribunal and not Ward Tribunal on the sense that the appellant was applying for extension of time freshly at the District Tribunal. However, the applicant chose to move this Court under Section 38 (1) of the Land Disputes Courts Act Cap. 216 R.E 2019. In my humble opinion this is the wrong provision of law since the intended decision for appeal did not originate from Ward Tribunal and it comes to this Court as the first appeal. The applicant was required to move this Court by citing the appropriate provision of law

which is Section 41 (2) of the Land Disputes Courts Act, (supra) and not otherwise.

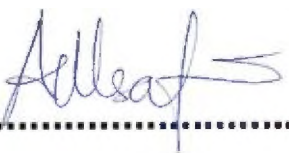
In his submission, the counsel for the applicant also made reference to section 14 (1) of the Law of Limitation Act Cap. 89 R.E 2019 which is also the wrong provision to be argued for the granting of the extension of time in land cases particularly for appeal purpose. As the law clearly provides where there is a written law providing for limitation of time the law limitation Act ceased to apply. Section 46 of the Law of Limitation Act (supra) provides as follows;

"Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act."

Having said all that, I find the application to be incompetent for being brought under the wrong provision of Law which is section 38 (1) of the Land Disputes Act Cap. 216 R.E 2019 and it is hereby struck out with leave to refile, accordingly with no order to costs.

It is so ordered.

Dated at Dar es Salaam this 26th of October, 2021.


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A. MSAFIRI

JUDGE

