

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

MISC. LAND APPLICATION NO. 472 OF 2020

*(Arising from the Judgment and Decree of the High Court of Tanzania
Land Division in Land Appeal No. 17 of 2019, originating from the ruling and
Drawn Order of the District Land and Housing Tribunal for Kinondoni at
Mwanayamala in Misc. Land Application No. 710 of 2017)*

MBOKA S. MBOKA APPLICANT

VERSUS

ERASTO ELLY SANGA 1ST RESPONDENT

CHRISTOPHER ELLY SANGA 2ND RESPONDENT

RULING

Date of Last Order: 12.10.2021

Date of Ruling: 12.10.2021

A.Z. MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 93 of the Civil Procedure Code Cap.33 [R.E 2019] to extend time within the applicant to file an appeal to impugn the decision of the District Land and Housing Tribunal for Kinondoni at Kinondoni in Land Application No.710 of 2017 delivered on 21st July, 2020.

The application is supported by an affidavit deposed by Mboka S. Mboka Binamungu, the applicant's Advocate. The respondent filed a counter affidavit deposed by Mr. Erasto Elly Sanga, the 1st respondent.

When the matter was called for hearing on 12th October, 2021, the applicant enjoyed the legal service of Mr. Thomas Massawe, learned counsel, and the 1st respondent had the legal service of Mr. Asirafu Muhidinie, learned counsel. The 2nd defendant did not enter an appearance, even though he was served through substitution of service. Therefore, following the prayer by the appellant's Advocate to proceed ex-parte succeeding the absence of the 2nd respondent, this court granted the appellant's Advocate prayers. The matter proceeded *ex parte* against the 2nd respondent.

When the 1st respondent learned counsel paraded the matter, Mr. Muhidini, learned counsel had no time to waste, he went straight to the point that they concede with the applicant's application with no order to costs. Cherishing the precious time of the court, Mr. Thomas Massawe had nothing to add rather he urged this court to grant the applicant's application without costs.

I have given due consideration to the submissions of both learned counsels, whereby the learned counsel for the respondent has conceded

the applicant's application. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few. Mr. Binamungu in his submission convinced this Court to find that the applicant's delay falls under technical delay which is explicable and excusable as stated in the case of **Fortunatus Masha** (supra).

I have gone through the applicant's affidavit and found that the applicant's Advocate has demonstrated his technical delay on paragraphs

4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 of the applicant's affidavit. The applicant delayed to file the appeal within time following the outbreak of Corona pandemic the appeal was argued by way of written submission then Hon. Manyanda, J was transferred to Mwanza High Court. As the result, the judgment of this court was delivered on 26th May, 2020. This court decided in favour of the applicant and he was given 30 days to set aside the *exparte* judgment of the District Land and Housing Tribunal for Kinondoni. The copies were served to the parties and the applicant found himself out of time to file an application to set aside the *exparte* judgment of the District Land and Housing Tribunal for Kinondoni.

Therefore the delay was beyond the applicant's control. The technical delay is well elaborated in the above-cited case of **Fortunatus Msha v William Shija and Another** [1997] TLR 154 that the technical delay is in the sense that the original appeal was lodged in time but the same was found incompetent thus fresh appeal has to be instituted.

Having briskly reviewed the depositions in the affidavit and considering that the fact that Mr. Muhidini concedes to the application. I am convinced that this case fits in the mould of cases for which extension of time on the ground of technical delay may be granted. Circumstances of this case reveal sufficient cause capable of exercising the Court's discretion and extend the time within which to file an application to set aside the *exparte*

judgment of the District Land and Housing Tribunal for Kinondoni at Kinondoni in Land Application No. 469 of 2016 within 21 days from today.

The application is hereby granted without costs.

Order accordingly.

Dated at Dar es Salaam this date 12th October, 2021.




A.Z.MGEYEKWA

JUDGE

12.10.2021

Ruling delivered on 12th October, 2021 in the presence of Mr. Thomas Massawe, learned counsel for the applicant and Mr. Ashirafu Muhidini, learned counsel for the 1st respondent.




A.Z.MGEYEKWA

JUDGE

12.10.2021