

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 272 OF 2021

(Arising from Land Application No. 34 of 2018)

ELIA DAUDI MUHARAGI.....APPLICANT

VERSUS

KHAMIS ABDALLAH MDUMA.....RESPONDENT

RULING

Date of Last Order: 30.09.2021

Date of Ruling: 25.11.2021

OPIYO, J.

This application was brought under section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019. The applicant is seeking for extension of time to enable him present his appeal out of time, against the decision and orders of the District Land and Housing Tribunal for Ilala, by Hon. Bigambo J.M, learned chairperson in Land Appeal No. 34 of 2018, dated 4th of September, 2020. It has been accompanied by the affidavit of the applicant, Elia Daudi Muharagi. The same was heard by way of written submissions. The applicant was represented by Advocate Emanuel Gikaro, who insisted in his submissions that the reason for the delay on part of the applicant to file his intended appeal was not caused by his negligence rather was due to the delay on part of the District Land and Housing tribunal for Ilala, to supply him with the copies of the impugned judgment

and decree. Mr. Gikaro went on to submit that, allowing this application is in the discretionary powers of this court and further that even if the court grants the orders sought, the respondent will not be prejudiced in any way. He insisted that the applicant has adduced sufficient reasons for his application to be allowed. That, there is no clear definition of what constitutes a sufficient cause, therefore, what was stated by the applicant in his affidavit amounts to sufficient cause as insisted in **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported)** in which the difficulties of laying down the fast and hard rules on what constitutes good cause was discussed reaching a conclusion that it is a relative term dependent upon the circumstances of each individual case.

Other cases cited by the counsel for the applicant include the case of **Zaidi Baraka and 2 others versus Exim Bank (T) Limited, Misc. Commercial Cause No. 300 of 2015 at Dar Es Salaam** which quoted the case of **Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 at Arusha** where the court observed that:-

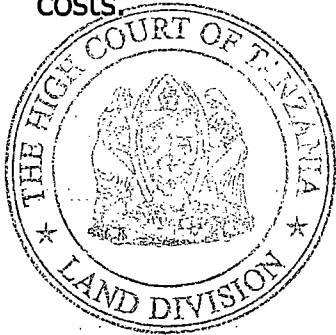
"As a matter of general principle, it is the discretion of the Court to grant extension of time. But that discretion is judicial and so it must be exercised according to the rules of reason and justice and not according to private opinion or arbitrary"

In reply, Advocate Achileus Charles Kalumuna for the respondent strongly disputed the arguments by the applicant's counsel and insisted that the applicant delay was caused by his negligence and not by the delay on part of the tribunal to supply the applicant with the documents he requested for as submitted by his counsel. That the applicants requested for the copies of judgment and decree 49 days after the delivery of the said judgment, hence he was already out of time to lodge his intended appeal even at the time he requested for the said copies. That, as per section 41 (1) and (2) of the Land Disputes Courts Act, the applicant was supposed to file his intended appeal within 45 days from the date of the decision.

Above all, the applicant did not account for a period he stayed without taking any action from 3rd May 2021 when he was supplied with the copies of judgment and decree and the date when this application was filed, on 8th of June 2021. That makes a period of more than 35 days unaccounted for. This is against the case of **Wambele Mtumwa Shahame versus Mohamed Hamis (the Administrator of the Estate of the late Asha Juma)** which ruled that

I have considered the arguments of both parties through their respective counsels, as well as gone through the affidavit in support of the application and the counter affidavit. My duty is to determine whether the application has merit or not. I made a perusal of the documents annexed to the application at hand and come across a letter dated 05th November 2020, where the applicant's advocate was requesting for the certified copies of the impugned judgment and decree. The same was received at the tribunal on the 9th of November, 2020. When I took a look at the date

when the judgment was delivered, that is on the 4th of September 2020, and the dates when the request was made and presented at the tribunal as explained here in above, it is obvious that the applicant's counsel requested for the said copies knowing that the time to present the intended appeal had already lapsed. That being the case, the reason for the delay as supported by his counsel is misleading and untrue. The truth is what was stated by the respondent's counsel that the delay was caused by negligence on part of the applicant himself and his counsel. Therefore, I find the application to be devoid of merit. The same is dismissed with costs.



M.P. OPIYO,
JUDGE
25/11/2021