

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND APPLICATION No. 132 OF2022

(Originating from Application No. 72 of 2020)

TRADTEC LIMITED.....1st APPLICANT

SULEIMAN NASSOR MOHAMED.....2nd APPLICANT

VERSUS

KORU FREIGHT LIMITED.....RESPONDENT

RULING

06.07.2022 & 10.08.2022

Masoud J.

This application was lodged under the provisions of Section 14(1) of the Law of Limitation Act, Cap 89 R.E 2019 (The Limitation Act). It originates from the decision of the District Land and Housing Tribunal for Temeke ("trial Tribunal") in Land Application No. 72/2020 ("The Application") dated 20/12/2021. One of the orders sought in this application is for extension of time within which the applicant can lodge an appeal against the whole judgment and decree of the abovementioned trial Tribunal. The applicants further prayed for any other relief that the

court may deem fit to grant. The application is supported by an affidavit of the 2nd applicant dated 25/03/2022. By an order of the court dated 11/05/2022, the application was disposed of by way of filing written submission.

In this court all parties were duly represented. While the applicants were represented by Mr. Titus Aron, Advocate, the respondent was represented by Mr. Elinihaki Kabura, Advocate. Rival written submissions were filed accordingly pursuant to the schedule set by the court.

In their submission to support the application, the applicants submitted that they were the respondents in the Application at the trial Tribunal and the judgment was delivered on 20/12/2021. They also submitted that the 2nd respondent (2nd applicant herein) requested for the copies of judgment and decree on the 23/12/2021 and the same was availed to him on 02/02/2022.

Before being availed with the copies of the said decision, and decree, they unsuccessfully attempted to file an appeal to this court on 28/03/2022 and were informed that the appeal was out of time. But the appeal, according to Mr. Aron, was still within time. He submitted that from the

date when the applicants were supplied with the copies to the date of filing the attempted appeal only 55 days had lapsed while the appeal was supposed to be filed within 60 days. Therefore, he prayed that their application be granted.

When replying to the applicant's submission, the counsel for the respondent started by adopting the respondent's counter affidavit for it to form part of his submission. He added that according to the provision of Section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019 (herein after the Act) appeals from the District Land and Housing Tribunal exercising its original jurisdiction may be lodged to the high court within 45 days from the date of the judgment, and not within 60 days as submitted by the counsel for the Applicants.

Mr. Kabura, learned counsel for the respondent, added further that the applicants' application lacks merit on the reason that they failed to account for each day of delay as is required by the law. As from the date when they were supplied with the copies of the impugned judgment, that is on 02/02/2022, to the date they decided to file the application at hand on 29/03/2022, there was a lapse of 55 days, which was never accounted for in the affidavit in support of the application.

An argument was made, correctly in my view, that the discretion of the court in extending time has to be exercised judiciously based on sufficient cause shown in the affidavit supporting the application. The reference was thus made to the case of **Tanga Cement Co. Ltd Vs. Jumanne Masangwa & Another, Civil Application No. 06/2001** cited with approval in the case of **Elizabeth S. Assenga vs St. Joseph Cathedral High School**, Misc. Application No. 174 of 2019 (unreported). With this argument, the court was asked to dismiss the application with costs.

Going through the parties' submissions, the main issue for determination is whether the application beforehand is meritorious. Having considered the issue against the backdrop of the records of this application, it appears that the applicants have moved this court under the wrong provision of the law. The applicants moved this court to grant their application under Section 14 (1) of the Limitation Act, instead of Section 41(2) of Cap.216

The law is well settled that wrong citation of enabling provisions in an application renders the application incompetent. This has been stated in a number of decided cases when the court was faced with similar circumstances as this one at hand. In the case of **Hussein Mgonja versus The Trustees of the Tanzania Episcopal Conference**, Civil

Revision No.02 of 2002, CA (unreported), the Court of Appeal striking out an application on the ground of incompetence stated that;

"If a party cites the wrong provision of the law, the matter becomes incompetent as the court will not have been properly moved"

Also see, **Edward Bachwa & Three Others vs The Attorney General & Another**, Civil Application No. 128 of 2006.

Although one would wish this court to invoke the oxygen principle and focus on the substantive part of the application on the reason that wrong citation is a mere technicality which does not necessarily go to the root of the matter, still the application would not on that score, if I were to entertain it, succeed as the applicants did not at all account for each day of the delay.

In line with the above reasoning, the 2nd applicant said in his affidavit that he was supplied with the copies of the impugned judgment, and decree on 02/02/2022, while the current application was filed on 29/03/2022, 55 days later, which is almost one month and 24 days later. In the case of **Oswald Masatu Mwizarubi Vs. Tanzania Fish Processors Ltd Cat**

Civil Application No. 13 of 2010 dealing with an application for extension of time, Her Ladyship Mjasiri J.A (as she then was) had this to say:

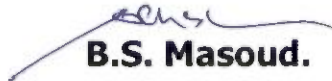
*"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. **It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion.**"*

The above quoted case gives the applicants responsibility to provide reasons to move this court to exercise its discretion. I am in agreement with Mr. Kabura, counsel for the respondent, that there is no any explanation as to what the applicants were doing for 55 days without taking any action or what prevented them from taking action for 55 days. It is instructive that the applicants did not comply with the principle of accounting for each day of delay as, for instance, held in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, CAT Civil Application No. 3 of 2007, (unreported) that:

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

In the upshot, on those observations and findings, it is obvious that the applicants failed to adduce sufficient grounds for the delay, to warrant the discretion of this court to extend time. Consequently, the application is hereby dismissed with costs.

Dated at Dar es Salaam this 10th day of August, 2022.


B.S. Masoud.
JUDGE

