

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

MISC. LAND APPLICATION NO. 161 OF 2022

THAUDESIA SAYONI.....APPLICANT

VERSUS

MUSA ABDALA NGWAYARESPONDENT

Date of Last Order: 11.08.2022
Date of Ruling: 27.09.2022

RULING

V.L. MAKANI, J

The applicant, THAUDESIA SAYONI, is applying for extension of time to appeal to this court against the decision of Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No.487 of 2020. The application is made under section 38(1) of the Land Disputes Court Act CAP 216 RE 2019 and is supported by the affidavit sworn by the applicant.

With leave of the court the application was argued by way of written submissions. The applicant and respondent drew and filed submissions personally.

Submitting in support of the application the applicant prayed to adopt the contents of his affidavit. He argued that she filed her appeal within time. She said she is challenging the decision of the Tribunal which found no merit in her application for setting aside the ex-parte judgment which was delivered on 25/2/2021. She said she filed Memorandum of Appeal challenging the said decision on 25/3/2021. She said she was on time, that is, the appeal was filed 28 days before expiry of statutory time and that the appeal was supposed to be lodged at the Tribunal who were duty bound to transfer the records to the High Court. She said according to section 38 (1) of the Land Disputes Court Act she had 60 days within which to file an appeal. That she filed the appeal promptly at the Tribunal on 25/3/2022. She insisted that the Tribunal received the Memorandum of Appeal in time but there was a delay in transferring the same to the High Court and that is the mistake which the applicant should not be punished with. He relied on a number of cases, amongst them being the case of **Tanzania Ports Authority vs Ami Mohamed, Civil Application No. 183 of 2015 (CAT-DSM)** (unreported).

On the issue of illegality, the applicant said that the decision of the Tribunal is tainted with illegalities and therefore extension of time is

necessary so as to correct the said illegality. She insisted that there are sufficient reasons which this court can consider and extend time.

In reply, the respondent said that the applicant has not shown sufficient reasons for this court to extend time. The respondent said the applicant has only shown negligence in that, she is intending to appeal against Misc. application No.487 of 2020 originating from the Tribunal but she has cited section 38 (1) of the Land Disputes Court Act which deals with cases originating from the Ward Tribunal. He said since the matter originated from the Tribunal the applicant was supposed to submit her appeal directly to the High Court. On the issue of illegality, the respondent said that applicant has not pointed out any point of illegality. He prayed for the court to dismiss the application.

The applicant did not file submissions in rejoinder.

I have gone through the affidavit and the submissions by the parties herein. The main issue for consideration is whether this application has merit.

It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported)).

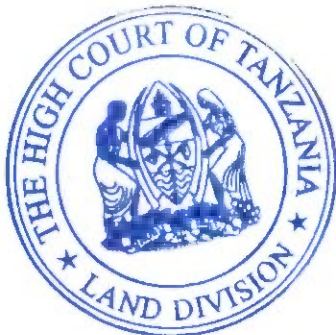
The applicant contended that she filed the Memorandum of Appeal at the Tribunal on time, but the tribunal delayed to transfer the records of appeal to the High Court. He cited section 38 (1) of Cap 216. As correctly stated by respondent the decision subject of the appeal is in respect of Misc. Application No.487 of 2020 whose origin is the Tribunal. The applicant was therefore required to directly file her appeal to the High Court and not in the Tribunal. The records of the appeal by the applicant at the Tribunal was therefore misconceived as section 38 (1) of the Land Dispute Courts Act is not applicable, therefore the reasons for delay cannot be pegged to the Tribunal.

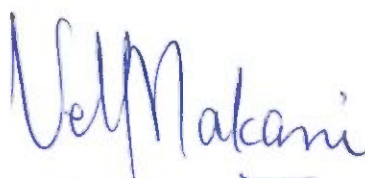
It is on record that the impugned decision was delivered and certified on 25/2/2021, this application was filed on 13/4/2022. It is almost

one year. According to the case of **Sebastian Ndaula vs. Grace Rwanafu, Civil Application No. 4 Of 2014** (unreported) everyday of delay has to be accounted for by the applicant. But in this case, as we have seen above, the delay is inordinate and has not been accounted for by the applicant and so the application cannot suffice an order for extension of time.

Regarding the ground of illegality, as correctly said by the respondent, the applicant has not pointed out what is actually the illegality to warrant the court to grant the extension of time.

In the result, the applicant has failed to advance sufficient reasons to warrant this court to exercise its discretion to grant extension of time. In the circumstances, the application is without merit, and it is hereby dismissed. Considering the circumstances of the case there shall be no order as to costs.




V.L. MAKANI
JUDGE
27/09/2022