

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.499 OF 2022

ADAN AMON MWAILASI APPLICANT

VERSUS

SELEMAN METHEW LUWONGO 1ST RESPONDENT

ABDULLAHMAN MASOUD 2ND RESPONDENT

MWAJUMA OMARY LUSEWA 3RD RESPONDENT

RULING

Date of last Order: 03.10.2022

Date of Ruling: 05.10.2022

A.Z.MGEYEKWA, J

I am called upon by the applicant to grant an extension of time to lodge an appeal out of time against the decision of Land Appeal No. 31 of 2018. . The application is preferred under section 41 (1) and (2) of the Land Disputes Court Act Cap. 216 [R.E 2019]. The affidavit is supported by an affidavit

deponed by Adan Amon Mwilasi, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondents have stoutly opposed the application by filing a counter-affidavit deponed by Mr. Lutufyo Mvumbagu, the respondents' counsel.

When the matter was called for hearing on 3rd October, 2022, the applicant appeared in person, unrepresented and the respondents enlisted the legal service of Mr. Lutufyo Mvumbagu, learned counsel.

In support of the application, the applicant urged this court to fully adopt his affidavit to form part of his submission. He stated that the decision of the District Land and Housing Tribunal was delivered on 31st July, 2019 but the applicant was not able to collect the copies within time. He submitted that he obtained the copies on 27th September, 2019, thereafter he had to hire an advocate, and the process and it took a long to transfer for the records to be Tribunal as a result 59 days lapsed.

The applicant continued to submit that he was advised to make a follow-up at this Court and due to Covid 19 his efforts taken were fertile. He added that on 8th November, 2021 he wrote a letter. To buttress his submission he referred this Court to the attached letter. The applicant valiantly contended that his application was tempered at the District Land and Housing Tribunal.

The applicant went on to submit that the counsel for the respondent filed a preliminary objection, hence, his application was dismissed.

In conclusion, the applicant urged this Court to grant his application and afford him the right to be head.

Responding, the learned counsel for the respondents' confutation was strenuous. Mr. Lutufyo submitted that the applicant's reasons for an extension as stated in his affidavit and submission are baseless. The learned counsel for the respondents contended that this Court has power to extend time but the said power is exercised if the applicant has adduced sufficient reasons for each day of delay. To support his submission, Mr. Lutufyo referred this Court to the case of **Dar es Salaam City Council V Group Security Company Ltd**, Civil Application No. 234 of 2013.

Mr. Lutufyo went on to submit that the applicant's affidavit; shows that the applicant was not serious since he filed several applications but he was unsuccessful. He stated that the previous Ruling was delivered on 23rd June, 2022 and he filed this application on 25th August, 2022 after a lapse of 2 months. The counsel for the respondent spiritedly argued that the applicant has alleged that he delayed obtaining the copies but he did attach any documents to prove when exactly he received the said copies. Mr. Lutufyo

asserted that the Ruling was ready for collection on the date when the Court delivered its Ruling. He added that the reason that the applicant was searching for an advocate could be a justifiable reason, however, the lapse of two years was an inordinate delay. Mr. Lutufyo insisted that the applicant for two good years did not bother to file an appeal until when he found that the respondents wanted to execute the Tribunal order. He urged this court to find that rights should be seen on both sides. He stressed that the applicant had failed to account for days of delay.

On the strength of the above submission, the learned counsel for the respondents beckoned upon this Court to dismiss the application with costs. In his rejoinder, the applicant urged this court to allow him to withdraw his application and allow him to account for the days of delay. He insisted that the delay of two years was out of his control. The applicant complained that the award was improper because the respondent had no any Sale Agreement to prove their ownership.

I have carefully considered the submissions made by the learned counsel for the applicant and the respondent in their oral submission and I have examined the affidavit and counter-affidavit, I find the issue for determination

is, whether the applicant adduced sufficient reasons for the delay to file an appeal out of time.

It is trite law that the decision to refuse or grant an extension of time is entirely at the discretion of the Court. The discretion is exercised judiciously according to the rules of reason and justice, and consistent with the holding in the case of **Mbogo v Shah** [1968] EA 93, quoted with approval in **Ngao Godwin Losero v. Julius Mwarabu**, CAT-Civil Application No. 10 of 2015 (unreported). Therefore, the applicant needs to satisfy this Court by presenting a credible case and sufficient cause. What amounts to a sufficient or good cause has been discussed in numerous cases including the Court of Appeal of Tanzania in the case of **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 and (all unreported) and **Farida Ahmed Mbaraka v Domina Kagaruki & Others**, Civil Reference No. 14 of 2019 [TANZLII 20th October, 2021].

In the instant case, the applicant's main reason for his delay is that he obtained the copies of the impugned decision out of time. I have perused the affidavits and noted that the applicant in paragraphs 3,4,5,6,7,8,9 and 10, has demonstrated reasons for his delay. He stated that after several follow-

ups to the District Land and Housing Tribunal for Temeke without success. I am in accord with the counsel for the respondents that there is no proof that the applicant applied for copies. However, there is a document that shows that the applicant tried to explain his problem to the Registrar of the High Court – Land Division. The applicant on 8th November, 2021 reported the matter to the Registrar of the High Court – Land Division. To support his claims he attached the said letter.

In short, I find that the effort taken by the applicant to lodge the instant application tells it all that it was not easy for him to file the instant application before this Court within time. I considered the fact that the applicant is still interested to see that justice is done. I have also considered the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when this court is there to determine the applicant's rights. In my view, once an appeal is eventually lodged before this court, this court will have to determine unpretentious issues brought by the applicant.

In sum, I am convinced that the applicant has presented a sufficient reasons to convince the Court to grant an extension of time. Accordingly, the

application succeeds and the applicant is given 45 days within which to file an appeal out of time.

Order accordingly.

Dated at Dar es Salaam this date 5th October, 2022.




A.Z.MGEYEKWA

JUDGE

05.10.2022

Ruling delivered on 5th October, 2022 via video conferencing whereas Mr. the applicant and Mr. Lutufyo Mvumbagu, learned counsel for the respondents were remotely present.




A.Z.MGEYEKWA

JUDGE

05.10.2022