

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION No. 584 of 2022

*(Arising from Appeal No. 216 of 2021 at the District Land and Housing
Tribunal for Temeke)*

UPENZI MOHAMED 1ST APPLICANT

AJIZA MOHAMED 2ND APPLICANT

HAMISI MOHAMED 3RD APPLICANT

ASHA YUSUF 4TH APPLICANT

VERSUS

SELEMAN ABASI 1ST RESPONDENT

NAIMA SELEMAN NDYANABO 2ND RESPONDENT

RULING

Date of last Order: 19.10.2022

Date of Ruling: 19.10.2022

A.Z. MGEYEKWA, J

This ruling is in respect of an application for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Temeke in Land Application No. 216 of 2021. The application is

preferred under the provisions of section 41 (1) & (2) of the District Land and Housing Tribunal Act, Cap. 216 [R.E 2019]. The application is supported by an affidavit deponed by Mr. Hassan Athuman Fatiu, the applicant's counsel. The applicant has set out the grounds on which an extension of time is sought. The application has met opposition, fielded by the respondent, through his counter-affidavit deponed by Ms. Mercy Chimtawi, the counsel for the respondent in which allegations of adducing sufficient reasons are valiantly denied.

When the matter was called for hearing on 19th October, 2022 the applicant enlisted the legal service of Mr. Hassan Fatiu, learned counsel, and the respondent enjoyed the legal service of Ms. Mercy Chimtawi, learned counsel.

Submitting for the applicant, Mr. Hassan urged this court to adopt his affidavit to form part of his submission. The learned counsel's submission was premised on what is stated in the supporting affidavit. The learned counsel for the applicant went on to submit that granting an extension of time is the discretionary power of the Court and the same is required to be applied judiciously upon advancing reasons. He added that there are no exact rules as to what amount to a good cause, the same depends on the circumstance of each case. The grounds which are considered to be worth consideration

by this Court for an extension of time are based on actual delay. The counsel asserted that he delayed to obtain copies of the impugned Ruling hence he was unable to prepare the appeal within time. To buttress his submission, Mr. Hassan referred this Court to his affidavit particularly paragraph 7.

The learned counsel for the applicant went on to submit that on 24th June, 2022, the applicant was within time, they wrote a letter requesting for copies. He submitted that they obtained the Ruling on 17th July, 2022 and at already 54 days lapsed. He strongly argued that the respondent's counsel in her counter-affidavit claimed that it was a delay of 60 days while it is not true. The counsel went on to submit that after being engaged to represent the applicants, he faced some problems. He had to attend or nurse his sick mother-in-law who is suffering from cancer and the whole family was confused. He went on to submit that at the time they obtained the said Ruling, the counsel for the applicant was nursing her mother.

The learned counsel for the applicant continued to submit that after obtaining the Ruling, they lodged the instant application for an extension of time. He claimed that the technical grounds are caused by the tribunal and himself in exclusion of his clients. Fortifying his submission he cited the case of **Felix Tumbo Kisima v TTCL & Another** [1997] TLR 57 CAT. He asserted that the respondents will not be prejudiced. Mr. Hassani urged this Court to

afford the applicant right to be heard as provided under Article 13 of the Constitution of the United Republic of Tanzania. He also urged this court to apply the overriding principle.

In conclusion, the learned counsel for the applicants beckoned upon this Court to grant the application.

In reply, Ms. Mercy urged this Court to adopt her counter affidavit to form part of her submission. The learned counsel for the respondents asserted that the Court in its plethora of rulings insisted that the applicant in the application for extension of time must state sufficient reasons. She added that the applicant is required to show diligence, the delay should not be inordinate, and likelihood of success in the intended appeal. Ms. Mercy submitted that the applicants have advanced the reasons for their delay based on technical delay and sickness.

The learned counsel for the respondent went on to submit that on technical delay; the record reveals that the applicants received the impugned Ruling on 19th July, 2022. She went on to submit that the statutory period of 45 days ended on 1st August, 2022 and the applicants filed their application on 22nd September, 2022. Ms. Mercy argued that the technical ground does not exist since the applicants were required to file their appeal after receiving the said copy. Thus, in her submission, she insisted that the applicant's ground of

technicality is unmaintainable. Ms. Mercy went on to submit that the ground of sickness stated under paragraph 6 of the affidavit is not a good ground for an extension of time because the applicants' counsel has attached a laboratory chic and an outpatient card. Ms. Mercy stressed that the applicants have failed to account for the days of delay from 1st August, 2022 to 22nd September, 2022.

The learned counsel for the respondents contended that the Advocate was negligent and the counsel admitted that he failed to lodge an appeal within time, the applicants did not state any reasons for their delay and they were in a position to hire another Advocate. She spiritedly argued that the issue of substantive justice and overriding principle should not be used as a defence Ms. Mercy contended that there is no likelihood to succeed.

On the strength of the above submission, Ms. Mercy beckoned upon this Court to dismiss the application for being short of merit.

In his rejoinder, the counsel for the applicants reiterated his submission in chief. He asserted that Mercy the case of Felix (*supra*) is not distinguishable from the case at hand since in the cited case the counsel mixed the issue of politics which in his view is more serious compared to sickness. Ending, the counsel for the applicants urged this Court to grant the application with costs.

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for an 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. In the case of **Mbogo and Another v Shah** [1968] EALR 93 the Court held that:-

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."

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 of Tanzania in a number of its decision, in the cases of **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007 and **Vodacom Foundation v Commissioner**

General (TRA), Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

In the matter at hand, I have noted that the learned counsel for the applicants was negligent and not serious in handling the applicants' matter. He is the one who was instructed by the applicants to handle the case, unfortunately, he appointed another Advocate to hold brief without making follow-ups to find out what transpired when the matter was before this court.

In the situation at hand, the applicants relied much on their advocate's service whereas the counsel was handling his clients' case. Therefore, as rightly stated by Mr. Hassan, the applicants' dilatoriness in taking action was a result of the acts of their counsel. In paragraphs 6 and 7 of his affidavit, the learned counsel informed this Court that after the delivery of the Ruling the counsel was unable to file an appeal within time because he was attending her sick mother who was admitted at Mlonganzila Hospital.

I have seen the supported Hospital chis (Annexure A-1) which proves that Mavundo Dimosi was attending medical treatment, although there is no proof if the patient was the Mother of the counsel for the respondent. But I believe that the counsel's was not able to exercise his professional tasks within time, thus he was not negligent rather he found himself out of professional. The Court of Appeal of Tanzania in **Zuberi Mussa v. Shinyanga Town Council**,

the Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported), held that:-

".... minor mistakes or lapses or oversight which do not amount to lack of diligence or gross negligence on the part of the applicant's counsel may constitute the reason for enlargement of time."

Reading from the submission by Mr. Hassan, I agree entirely that the delay was not caused by the applicants. Therefore, in the circumstance at hand the delay was outside the applicants' power to control because they believed that the counsel was taking all steps in filing an appeal. In the case of **Felix Tumbo Kisima v TTC Limited and Another**, Civil Application No. 1 of 1997 (unreported), it was held that:-

"It should be observed that the term "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence."

Applying the above authorities, I hold that the counsel has adduced good reasons and the same is an excusable delay in respect of which the prayer for extension of time is justified.

For the sake of clarity, I have read the cited case of **Ngao Godwin** (supra) the court discussed the negligence of the applicant. In the circumstance at

hand, the negligence was caused by their learned counsel and not the applicants. Therefore, in the interest, of justice, I find that the applicants have adduced sufficient reasons for their delay.

In the upshot, I am convinced that the applicant has presented a credible case sufficient to convince the Court to grant an extension of time. Accordingly, the application succeeds and the applicant is given 21 days within which to institute an appeal before this Court. No order as to costs.

Order accordingly.

Dated at Dar es Salaam on this 19th October, 2022.




A.Z.MGEYEKWA
JUDGE
19.10.2022

Ruling delivered on 19th October 2022 in the presence of Mr. Hassan Fatiu, counsel for the applicants and Ms. Mercy Chimtawi, counsel for the respondents.




A.Z.MGEYEKWA
JUDGE
19.10.2022