

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 476 OF 2022

(Arising from the Judgment of the District Land and Housing Tribunal for Kinondoni in Land Application No. 200 of 2015 delivered on 1st day of June, 2022 by Hon. L.R. Rugarabamu, Chairman)

SIMON WILSON ZIMBWE APPLICANT

VERSUS

ALLY NJECHELE OMARI 1ST RESPONDENT

HAROLD G. CHIPAHNA 2ND RESPONDENT

HILDA MUSSA 3RD RESPONDENT

ALTEMIUS MAPUNDA 4TH RESPONDENT

RULING

Date of Ruling 31.10.2022

Date of the last order 31.10.2022

A.Z. MGEYEKWA

In this application, the Court is called upon to grant an extension of time to enable the applicant to institute an appeal to this Court, against the decision of the District Land Housing Tribunal in Land Application No. 200 of 2015. The application, preferred under the provisions of section 41 (2)

of the Land Disputes Courts Act, Cap. 216 [R.E 2019] and Section 95 of the Civil Procedure Code, Cap 33 [R.E. 2019]. The affidavit is supported by an affidavit deponed by Simon Wilson Zimbabwe, 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 Ally Njechele Omari, Harold G. Chipahna, and Altemius Mapunda, respondents.

When the matter was called for hearing on 31st October, 2022, the applicant enlisted the legal service of Mr. Sostenes Edson, learned counsel, the 1st, 2nd, and 4th respondents enjoyed the legal service of Ms. Neema Massame, learned counsel. The application proceeded *ex parte* against the 3rd respondent upon proof of service through substitution published in Mwananchi Newspaper on 18th October, 2022.

On his submission, counsel for the applicant adopted the affidavit deponed by Simon Wilson Zimbabwe to form part of this submission. He stated that the applicant wants to file an appeal against the decision of the District Land and Housing Tribunal in Application No. 200 of 2015 delivered on 1st June, .2022 in favour of the respondents.

The learned counsel further stated that on 2nd June, 2022, the applicant wrote a letter requesting a copy of the Judgment of the District Land and Housing Tribunal. He added that the applicant received the said copy on

8th July, 2022, and only six days remained for him to file an appeal, despite the fact that there were several follow-ups with no success. It was his submission that the delay was caused by the tribunal for failure to supply the said copy within time. He added that thereafter the applicant faced some family problems which the applicant had to travel. To support his submission to annexures SWZ-1 and SWZ-2, SWZ-3, and the case of **Manji Limited v Arusha General Store** (1991) TLR 165, which ruled that failure to abide by the law cannot restrain the applicant to file an appeal.

In conclusion, Mr. Sostenes urged this court to be pleased to grant this application for an extension of time to file an appeal out of time.

In response, Ms. Neema, learned advocate, adopted the joint affidavit of the three respondents and forcefully objected to the application. She contended that the copies of the Judgment were certified and ready for collection on 8th July, 2022. She added that the six days were enough for the applicant to lodge his appeal within time. Ms. Neema further stated that the applicant in paragraph 5 of her affidavit said that he obtained a copy of the Judgment on 6th July, 2022 while the said copy was already been certified.

The counsel continued to argue that several days had lapsed but the applicant did not take any action to lodge an appeal within time. She added that the applicant has failed to account for the 3 days when he had

family problems. Ms. Neema valiantly argued that the attached bus ticket is not valid.

In conclusion, Ms. Neema urged this Court to dismiss the application with costs.

In rejoinder, counsel for the applicant reiterated his submission in chief. He added that the attached bus ticket is valid and genuine. Ending he urged this court to grant this application.

Having gone through the submission from both sides, it appears that the issue for determination is *whether the applicant has advanced sufficient good cause to be granted the application to appeal out of time.*

It is the legal position that extension of time, being an equitable discretion, its exercise must be judicious. As stated in numerous decisions, such discretion is done upon satisfaction by the applicant through a presentation of a credible case upon which such discretion may be exercised. This position was enunciated by the **Ngao Godwin Losero K. Julius Mwarabu**, Civil Application 10 of 2015) [2016] TZCA 302 (13 October 2016) held as follows:-

"To begin with, I fee! It is instructive to reiterate, as a matter of general principle that whether to grant or refuse an application like the one at hand 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."

The model of computing the days delayed is provided under Section 19 (2) of the Law of Limitation Act, Cap 89 [R.E. 2019] which provides: -

*"(2) **In computing** the period of limitation prescribed for an **appeal**, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was delivered, and **the period requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.**" [Emphasis added].*

Applying the above provision of law in the instant application means that the time for the applicant to lodge an appeal to this court has to be computed. The aggrieved party is required to lodge an appeal from the District Land and Housing Tribunal within 45 days. Section 41 (2) of the Land Disputes Court Act Cap 216 [R.E. 2019] provides that: -

"(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

In the case of **Lazaro Mpigachai v R**, Criminal Appeal No. 75 of 2018, the Court of Appeal of Tanzania held that:-

'The petition of appeal was filed 20 days later, that is, on 7/2/2017, thus, this was also filed on time. In the circumstances, certainly, the Appeal was within time'

In computing days of delay from 8th July, 2022 when the copy was supplied to the applicant to 11th August, 2022 when the application was lodged before this court it is only 34 days, hence the applicant is still within time to lodge his appeal.

In the upshot, the instant application is granted and the applicant is allowed to file an appeal within thirty days from today. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 31st October, 2022.



Ruling delivered on 31st October, 2022 via audio teleconference whereas, Mr. Sostenes Edson, learned counsel for the applicant and Ms. Neema Massame, learned counsel for the 1st 2nd and 4th respondents were remotely present.



A.Z.MGEYEKWA
JUDGE

31.10.2022