

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

MISC. LAND APPLICATION NO. 104 OF 2022

(Arising from Temeke District Land and Housing Tribunal in Misc. Application No. 74 of 2015)

SELEMANI MAPAKA.....APPLICANT

VERSUS

GERODA MSAGWA.....RESPONDENT

Date of Last Order: 13.09.2022
Date of Ruling: 31.10.2022

RULING

V.L. MAKANI, J

This application is by SELEMANI MAPAKA. He is applying for extension of time to file an appeal against the decision of Temeke District Land and Housing Tribunal (the **District Tribunal**) in Misc. Application No. 74 of 2015 (Hon. Mwakibuja, Chairperson).

The application is made under section 41(2) of the Land Disputes Court Act CAP 216 RE 2019 and section 14(1) of the Law of Limitation Act CAP 89 RE 2019; and is supported by the affidavit of the applicant herein. The respondent filed a counter affidavit opposing the application.

According to the affidavit by the applicant, the matter originated from the Ward Tribunal where on 20/10/2011 the decision was in the favour of the respondent herein that the applicant had trespassed into the respondent's land. It is stated that the applicant then filed an application to the District Tribunal for extension of time to file appeal out of time. The application was dismissed on 28/07/2016 for want of merit. The applicant filed this application on 11/03/2022 against the decision of the District Tribunal.

The application was argued by way of written submissions and the parties drew and filed their submissions personally. I have gone through the submissions by the applicant, and I have noted that he has submitted extensively on the appeal itself. In that regard, I will confine myself to the submissions that relate to extension of time. In the affidavit and submissions the only reasons given by the applicant for the delay to file his appeal was that he was not aware that the District Tribunal had delivered its ruling on extension of time on 28/07/2016.

In reply the respondent said the applicant has failed to give sufficient reasons for the delay. He said the reasons given by the applicant are

merely negligence because he did not make a follow-up and file an appeal in proper time. He said the applicant has not accounted for the days of the delay as provided for in the case of **Bushfire Hassan vs. Latina Lucia Masanya, Civil Application No. 3 of 2007** (unreported) which quoted the case of **Wambele Mtumwa Shahame vs. Mohamed Hamis, Civil Referenc No. 8 of 2018 (CAT)** (unreported) where the Court of Appeal said a delay of even single day has to be accounted for otherwise there would be no point of having rules prescribing periods which certain steps have to be taken. He said the applicant has failed to account for the delay from the time the decision of the District Tribunal was given up to the time this application was filed on 11/03/2022. He insisted that one cannot be left to come to court at whatever time one wishes to. He relied on the case of Sophia **Yusuph Mwinyi vs. Destelia Antony & Others, Misc. Land Application No. 734 of 2016 (HC-DSM)** (unreported)

Having gone through the submissions by the parties the issue for consideration is whether this application has merit.

The courts have stated time and again that extension of time is the discretion of the court. However, for the court to exercise such

discretion, the applicant has the duty to place before the court sufficient reasons for the delay, so that the court can judiciously exercise the said discretion (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported)). In the case **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT)**(unreported), the Court of Appeal outlined principles that guide courts to grant extension of time including that the applicant must account for all the delay and the said delay must not be inordinate.

As said hereinabove, the only reason that the applicant gave for the delay was that he was not aware that the District Tribunal had dismissed his application for extension of time. He said he was "shocked" when he was given the ruling by the District Tribunal on 26/02/2022 which showed that the decision was given on 28/07/2016. This explanation, as correctly said by the respondent is not sufficient reason for delay but it shows lack of diligence on the part of the applicant. That he did not make a follow up or make any further steps after the delivery of the said ruling. Further it is strange for the

applicant to say he was "shocked" to be told that the ruling was delivered way back in 28/07/2016 because the proceedings of the District Tribunal clearly shows that both the applicant and the respondent were present when the ruling was delivered (see **Annexure SM2** to the affidavit). So, the alleged "shock" by the applicant cannot be true, as his presence was recorded on the date of the and so he knew the outcome but decided not to take action for more than 5 years. As correctly said by the respondent, parties cannot be left to come to court whenever they feel like because the rules and procedures on time would have no meaning at all. In my considered view, this is not a sufficient reason for grant of extension of time.

In the result and for the reasons above, it is apparent that the applicant has failed to advance sufficient reasons to warrant this court to exercise its discretion to grant extension of time to file appeal. Consequently, the application is without merit, and it is hereby dismissed with costs. It is so ordered.


V.L. MAKANI
JUDGE
31/10/2022