

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. APPLICATION NO. 654 OF 2021

(Arising from the decision of the District Land and Housing Tribunal for Ilala in
Land Application No. 216 of 2020)

RHODA JOHSON BALEGEZA APPLICANT

VERSUS

JOLIJO MAPASI MKABE 1ST RESPONDENT

LEONARD RAPAHIL MTUNDA 2ND RESPONDENT

MWAGATI AUCTION MART AND GENERAL SUPPLIES

LIMITED 3RD RESPONDENT

RULING

Date of last Order: 16.11.2022

Date of Ruling: 16.11.2022

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to extend time for the applicant to file an appeal out of time against the Judgment of the District Land and Housing Tribunal in Land Application No. 216 of 2020 dated 15th March, 2022.

The application is supported by an affidavit deposed by Rhoda Johnson Balegeza, the applicant. The application has encountered formidable opposition from the 2nd respondent and has demonstrated his resistance by filing a counter affidavit, deposed by Mr. Leonard Rapahel Mtunda, the 2nd respondent.

When the matter was called for hearing on 16th November, 2021, the applicant, 1st and 2nd respondents appeared in person. The matter proceeded *ex parte* against the 3rd respondent who was duly being served to appear in court.

In support of the application, the applicant had not much to say, she urged this Court to adopt her affidavit to form part of her submission. She submitted that the matter in Land Application No. 216 of 2020 was before Rugarabamu and the Chairman delivered his Judgment on 15th March, 2022. The applicant went on to submit that thereafter she engaged TAWLA for legal assistance on the same date when the Judgment was delivered they wrote me a letter requesting copies which they receive on 19th April, 2022. She went on to submit that thereafter, she started to engage an advocate.

The applicant further submitted that he headed to TAWLA just to find that the person who assisted her to prepare the case was transferred to up country. They promised her to go through the court file but to seek the

assistance they did not fulfill their promises instead they informed her to go to the Legal Human Rights Center. Hence they informed her that she was out of time to file an appeal. The applicant stated that they file a Misc. Land Application No. 268 of 2022 before Hon. Mwenegoha, J but the Application was struck out on 9th September, 2022, then they had to prepare the instant application for an extension of time to file an appeal out of time.

The first respondent did not object the application.

In reply, the second respondent came up forcefully and opposed the application. He lamented that the first respondent and applicant are delaying his rights. He argued that this is not the first time the applicant to file a hopeless application. He claimed that the applicant and the first respondent are playing delaying tactics. He contended that it was their fault to file a defective application before Hon. Mwenegoha, J by citing a wrong citation of the law.

In her rejoinder, the applicant stated that she did not know if the application before Hon. Mwenegoha, J was defective since she is not conversant with legal matters thus she banked upon her lawyer and the lawyer is the one who directed her to file the said application hence it is not her fault.

Having considered the submissions made by the applicant and 1st and 2nd respondents' oral submission and examined the affidavit and counter affidavit, the issue for our determination is *whether the applicant had adduced sufficient cause to warrant this Court to grant an extension of time.*

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 as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

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

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the 2nd respondent's counter affidavit,

the applicant has referred this Court to her affidavit backing what she encountered in trying to reverse the decision of the District Land and Housing Tribunal for Mkuranga. The applicant has raised two main limbs for his delay, technical delay, accounting for each day of delay.

I have gone through the applicant's affidavit and found that the applicant has demonstrated his technical delay in paragraphs 2, 3, 4, and 5 of her affidavit. The applicant before filing an application before Hon. Mwenegoha, J made several follow-ups to obtain copies of the impugned Judgment and obtained the copies within time on 19th April, 2022. Thereafter, the applicant tried to engage a legal assistant who could give succor to the applicant to file an appeal within time, however, that was not done. Later she manage to involve the Legal and Human Rights Centre and was advised to file an application for an extension of time. Unfortunately, the same was withdrawn on 9th September, 2022 for being incompetent, and on 19th October, 2022 the applicant filed the instant application.

As amply submitted by the applicant he has convinced this Court to find that the applicant's delay was out of her control. It is vivid that the efforts taken by the applicant imply that the applicant was not negligent, she engaged a legal assistant to fast-track the filing of an appeal, however, the Legal Aid Centre delayed lodging the applicant's appeal timely. 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."

Applying the above position of the law, it is crystal clear that the applicant's delay was out of her control. In the absence of any lack of diligence or negligence on the part of the applicant is an excusable delay in respect of which the prayer for an extension of time is justified.

Having concisely reviewed the depositions in the affidavit and the submissions made by the applicant, I am convinced that this case fits in the mould of cases for which an extension of time on the ground of actual delay may be granted. Therefore, I proceed to grant the applicant's application to lodge an appeal within 30 days from the date of the Ruling.

No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 16th November, 2022.



Ruling delivered on 16th November, 2022 in the presence of the applicant,
1st and 2nd respondents.

