

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

MISC. LAND APPLICATION NO 329 OF 2022

(Arising from Ilala District Land and Housing Tribunal in Land Application No.384 of 2021)

HERI JOHN KESSY.....1ST APPLICANT
MASHAKA RAMADHANI.....2ND APPLICANT
SEKI MASHAKA.....3RD APPLICANT
JUMANNE ABDALLAH.....4TH APPLICANT
YUSTA MOHAMED.....5TH APPLICANT
GRACE MPOKWA.....6TH APPLICANT
SHABANI RASHID.....7TH APPLICANT
KHALFANI SAIDI.....8TH APPLICANT
GODWIN KASIGA.....9TH APPLICANT
SAIDI ABDALLAH ANDANENGA.....10TH APPLICANT

VERSUS

TISH MUHSIN YUSUPHRESPONDENT

Date of Last Order: 21.11.2022
Date of Ruling 30.11.2022

RULING

V.L. MAKANI, J

The applicants named above are applying for extension of time within which to file an appeal to this court against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Land Application No.324 of 2021 (Hon. A.R, Kirumbi, Chairman).

The application is made under section 14(1) of the Law of Limitation Act, Cap 89 RE 2019 (the **Limitation Act**). The application is supported by an affidavit sworn by Ms. Amina Rajabu Macha, Advocate who also drew and filed submission on behalf of the applicant. The respondent swore a counter affidavit to oppose the application and Mr. M.R Kiondo, Advocate drew and filed submissions in reply on his behalf.

Ms. Macha narrated the history of the matter at the Tribunal from the mention date to execution. She said that, among the reasons for delay is that the applicants are laypersons who did not know the procedures of litigation and that the application for execution was filed without notifying the applicants. She said further the records show that summons was served through Mwananchi Newspaper of 23/10/2021 and it was granted and that the matter should proceed in the absence of the applicants.

Ms. Macha pointed illegalities as another ground for extension of time. She said the Chairperson of the Tribunal did not direct the applicants well after noting that they were laypersons and were unaware of the legal procedures which resulted to the application proceeding ex-parte.

He relied on the case of **Enock Kalibwani vs Ayoub Ramadhani & 2 Others, Civil application No.491/17 of 2018 (CAT-DSM)** (unreported) and the case of **Zaidi Baraka & 2 Others vs Exim Bank (T) Limited, Misc. Commercial Cause No.300 of 2015 (HC-Commercial Division)** (unreported).

Accounting for every single day of delay, Ms. Macha said that, from June 2021 to the filing of this application, the applicants were struggling to know the ownership of respondent by filling different search in the registry which search gave them an answer leading to the filing of this application.

In reply, Mr. Kiondo prayed to adopt the contents of the counter affidavit. He said that for the court to exercise its discretionary powers in granting extension of time, the applicant must account for each day of delay. He said that in this application the applicants have failed to account for each day of the delay. On the issue of illegalities, he said that the proceedings and decision of the Tribunal were made in accordance with the law. That the allegation of illegality is unfounded. He said that the delay was due to the applicants' negligence. He relied on the case of **William Shija vs Fortunatus Masha (1997) TLR 213**

where it was ruled that negligence is not sufficient reason to extend time. He prayed for the application to be dismissed with costs.

The applicants did not file rejoinder submissions.

Having gone through affidavits and submission by the parties, the main issue for consideration is whether this application has merit. In so doing the court will be guided by the principle that the grant of 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 such discretion. Some principles, though not exhaustive in exercising the discretion by the court were stated 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 reasons of the delay by the applicants were that they are laypersons and therefore unaware of the procedures of the Tribunal as a result, they failed to file their written statement of defence and ex-parte judgment was entered against them. They also alleged illegality in that

the Chairman did not make them aware of the procedures of the Tribunal. Without wasting the time of the court, and as correctly stated by Mr. Kiondo, the applicants have not given sufficient reasons for their delay. They have only manifested negligence on their part. If at all they were improperly condemned unheard at the Tribunal, the proper procedure was for them to file appeal within time or rather apply to set aside ex-parte decision. The reasons given that they are laypersons and further that they did not know the procedures are lame excuses as ignorance of the law is not a defence. And with due respect to Ms. Macha lack of knowledge of the procedures by the parties cannot be termed as illegality. The applicants had an opportunity of seeking for legal assistance at that time as is the case in the present application. They cannot blame the Tribunal for their lack of diligence and inaction.

The applicants in their submissions allege that they have been searching for the ownership of the respondent from June 2021 to the filing of this application. Again, this is not true because the impugned decision was delivered on 09/06/2021. **Annexures HJK 4** shows that the search was requested in 09/05/2022 and a response from the City Council of Dar es Salaam was on 26/05/2022. The applicants have not told this court what they were doing from 09/06/2021 up until

they decided to do a search at the City Council on 09/05/2022. This is about 11 months, and this period has not been accounted for. The courts have stated time and again that in an application for extension of time the applicant has to account for every single day of delay. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, (unreported) it was stated that:

"Delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

In the present instance, it is apparent that the applicants have not accounted for the 11 months delay. Such delay is inordinate and cannot go unnoticed.

In view thereof, it is evident that the applicant has failed to establish sufficient reasons to warrant the court to exercise its discretionary powers to grant extension of time within which to file an appeal. Subsequently, the application is dismissed with costs. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
30/11/2022