

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

MISC. LAND CIVIL APPLICATION NO 437 OF 2022

EMMANUEL ZABRON.....APPLICANT

VERSUS

DEOGRATIAS MAKOTORESPONDENT

Date of Last Order: 18.10.2022
Date of Ruling: 14.11.2022

RULING

V.L. MAKANI, J

The applicants named above are applying for extension of time within which to file appeal out of time against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Land Application No. No.42 of 2017.

The application is made under section 38(1) and 51(b) of the Land Disputes Courts Act, CAP 216 RE 2019 and is supported by affidavit sworn by the applicant.

The applicant's submissions were drawn by Mr. M.J. Lugaziya, Advocate. He said the impugned decision was delivered on

17/03/2020. He said the applicant instructed Mr. Rwebangira, Advocate and on 5/5/2020 the requisite documents for appeal were ready and on 17/06/2020 Mr. Rwebangira handed to the applicant duly signed documents for appeal. That the applicant as a layperson had no doubt that an appeal had been filed. He said meanwhile, the respondent had already lodged his cross appeal and the applicant received summons on 26/05/2020. That upon inquiring about his appeal, the applicant found out that none was in the filing system of the court. He said the applicant immediately decided to find the service of another lawyer. According to Mr. Lugaziya, the applicant said he twice applied for extension of time which were found to be ill-fated but was granted leave to file the present application. He insisted that there was no delay whatsoever as the applicant trusted his former lawyer but unfortunately, he had not filed any appeal. He also argued that the impugned decision was tainted with irregularities as the decision was not based on any principle of law in receiving, recording and evaluating evidence. He said on the same day when the applicant discovered that there was no appeal in the court system, he filed this application on 25/05/2021. Mr. Lugaziya relied on the case of **Elius Mwakalinga vs. Domina Kagaruki & 5 Others, Civil Application No. 120/17 of 2018 (CAT-DSM)** (unreported) and prayed for this application to be granted.

Mr. Benito Mtulo drew and filed submissions in reply on behalf of the respondent. He said that the impugned decision was delivered on 27/03/2020. That the first application by the applicant was on 25/05/2021 and the present application was filed on 01/08/2022. He said even if we assume that the appeal was filed on 17/06/2020 still it is more than 100 days and out of time without leave of the court. He said the time from when the judgment was delivered to the filing of application is more than 60 days and the same goes unaccounted. He relied on the case of **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). He said paragraphs 4,5,6 and 9 of the applicant's affidavit shows that the reasons for delay hinges on inaction, negligence and ignorance of both the applicant and his advocate. That an appeal under section 38 (1) of the Land Disputes Courts Act does not require the copy of the judgment. That even the appeal documents (**Annexure EZ-1**) of 17/06/2020 lacks evidence of being received by the court. That there is no case number and payment documents. He insisted that there was negligence and lack of due diligence on the part of the applicant and his advocate. He insisted that it was negligence on the part of the applicant for failure to know that a registered case should have the

number and payment documents. He relied on the case of **Farid F. Mbarak & Another vs. Ndege Commercial Services, Civil Application No.83 of 2020** (unreported). On the issue of illegality, he said that the same should be apparent on the face of the record. He relied on the case of **Leonard S. Ndeschau vs. Joseph Mkiponya, Misc. Land application No.51 of 2021 (HC -DSM)** (unreported). That the illegality alleged by the applicant is not on the face of the record. He added that the applicant has not demonstrated that no prejudice will be occasioned to the respondent if this application is granted. He said that allowing this application will prejudice the respondent and entertain applicant's inaction in the expense of time and unnecessary delay as a result litigation will not come to an end. He prayed for this application to be dismissed.

In his rejoinder Mr. Lugaziya reiterated his main submission and added that it is not the law as contended by the Counsel for the respondent that appeal in land matters should not be accompanied by the copy of the decision. That the copies of the decision were availed to the applicant on 20/05/2020 and he was made to believe that the appeal was lodged on 17/06/2020 within 60 days. He said he does not argue illegality as a ground for extension of time.

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

It has been 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 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 main reasons advanced by the applicant's counsel for delay is negligence or what may be termed as untruthfulness on the part of applicant's previous advocate. That he alleged to have filed appeal on 17/06/2020, he handed over the appeal documents to the applicant but to the contrary it was discovered that he did not file any appeal. On the other hand, Counsel for respondent was of the view that both the respondent and his Counsel were negligent. That the applicant has not accounted for such inordinate delay.

It is not disputed by both parties that the impugned decision was delivered on 27/03/2020 and that the copies were extracted on 05/05/2020. Going through the affidavits, submissions, and the records available, it is alleged by the applicant that his Counsel first filed the appeal on 17/06/2020, therefore the appeal was supposedly within the time. The issue is whether the same was actually filed. Looking at the said documents, (i) they lack the case number, (ii) they lack the seal of the court, (iii) they do not show if the said documents were received by the Court Registry, and (iv) the filing is not supported by any payment receipt. In that regard it is clear that there is no appeal on record that has been filed by the applicant which fact was also admitted by Mr. Lugaziya.

Further, the applicant alleged to have been handed over the appeal documents on 17/06/2020, even by common sense it is expected that the applicant should have gone through the documents to ascertain at least the documents were paid for payment slips and he could have discovered that the alleged appeal had not been filed. Since he took no such efforts, then he also contributed to the negligence in the delay in filing the appeal documents. In essence therefore there was no appeal that was filed by the applicant. The position therefore remains that the copies of the decision were extracted on 05/05/2020 and this

application was filed on 01/08/2022. This is a period of about two years which has not been accounted by the applicant. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Appeal No. 3 of 2007**(unreported) the Court had this to say:

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

Mr. Lugaziya also argued that the reasons for delay were misrepresentation by the applicant's previous Counsel. This argument cannot stand as it falls under the ambit of negligence which is not an excuse for any delay. In the recent case of **Jubilee Insurance (Tanzania) Limited vs. Mohamed Samer Khan, Civil Application No. 439/01 of 2020 (CAT-DSM)** (unreported) the Court of Appeal was very clear that negligence of an advocate cannot be taken as a sufficient cause for extension of time. In this case the Court of Appeal stated:

"... it is therefore clear, not only that the applicant has totally failed to account for the delay but also that both the applicant and her advocates exhibited negligence and inaction. It should also be emphasized that the negligence of an advocate or his ignorance of the procedure, is not an excuse and does not constitute a sufficient cause for extension of time."

The case above quoted the case of **Exim Bank (T) Limited vs. Jacquilene A. Kweka, Civil Application No. 348 of 2020 (CAT)**(unreported) where it was emphasized that failure of the advocate to act within the dictates of the law cannot constitute a good cause for enlargement of time. Consequently, the reasons for the delay by the applicant narrated herein above cannot stand as sufficient to deserve the grant of extension of time.

In the result, it is apparent 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 to the Court of Appeal. Subsequently, the application is hereby dismissed with costs.

It is so ordered.




V.L. MAKANI
JUDGE
14/11/2022