

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 616 OF 2022**

*(Arising from the Decision of District Land and Housing Tribunal of Kinondoni  
at Mwananyamala in Land Appeal No. 09 of 2020 dated 24<sup>th</sup> March, 2021  
made by Hon. Rugarabamu Chairman, also the decision of Ward Tribunal of  
Bunju in case No. 17/2019 dated 19/12/2019)*

**LEONARD BISEKO MKAMA ..... APPLICANT**

**VERSUS**

**PROTY DOMINIC NGOWI ..... RESPONDENT**

**RULING**

*Date of the last Order: 16.11.2022*

*Date of Ruling: 16.11.2022*

**A.Z. MGEYEKWA**

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land Housing Tribunal in Land Appeal No. 09 of 2020. The application, preferred under the provisions of section 38(1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by an affidavit deposed by Leonard Biseko Ngowi, the applicant. The applicant has set out the

grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter-affidavit deponed by Protty Dominic Ngowi, the respondent.

When the matter was called for hearing on 16<sup>th</sup> November, 2022, the applicant enlisted the legal service of Mr. Mburaga Bernard, learned counsel, while the respondent was represented by Mr. Barnaba learned Advocate.

On his submission Counsel for the applicant adopted the affidavit deponed by the applicant to form part of his submission. He stated that the applicant is out of time to lodge the appeal to challenge the decision of the District Land and Housing Tribunal in Application No. 09 of 2020 delivered on 24.03.2021 which was decided in favour of the respondent.

He further stated that he is aware that he had to appeal to the High Court within 60 days from 24.03.2021, but that the applicant faced serious matrimonial issue that hindered him to do anything. The counsel added that the applicant decided to move to Moshi until the time when he recovered. Mr. Bernard added that on 12.09.2022 the applicant applied for certified copy of Judgment.

Mr. Bernard submitted in length the family affairs of the applicant, He urged this Court to find that the applicant was unable to file his application because of existence facts and it was beyond his ability. He urged this

Court to consider the fact that the parties in the application are close relatives and his matrimonial problems was the main cause of his delay. To support his submission he referred this Court to the attached documents and the case of **Joseph Sweet v Republic**, Criminal Appeal No. 11 of 2017, the Court considered the loss of parents as a good cause for extension of time.

In conclusion, he urged this Court to find that the delay was not inordinate and grant the applicant's application

In reply, counsel for the respondent contended that the delay was inordinate because the delay was more than one year, which the applicant had to appeal within 60 days from the date of the Judgment, hence, even if this court had to agree, the applicant could have acted immediately after had returned in Dar es salaam from Moshi, and after being supplied a copy of Judgment. Mr. Barnaba stressed that the applicant did not account for the delayed days even after his return from Moshi. He further stated that the applicant was negligent as he delayed to file his appeal for more than a year. Mr. Barnaba added that the applicant has failed to point any illegality to move this Court to grant his application.

The learned counsel distinguished the cited case of **Joseph Sweet** (supra, he argued that the cited case does not tally to the case at hand since the applicant in the cited case was in prison and was striving to

engage a counsel. Thus, in his view the applicant in the case of **Joseph Sweet** (supra) was not idle.

In conclusion, the learned counsel for the respondent urged this Court not to grant the applicant's application because the applicant did not account for each day delayed, as required by the law.

In his short rejoinder, counsel for the applicant reiterated what was stated in chief. He stated that there is no dispute that the applicant was out of Dar es Salaam. He stressed that the applicant was not negligent. He urged this Court be pleased to account for the days of delay from the date when the applicant returned from Moshi.

Having, gone through the submission of both counsels, it appears that Land Appeal No. 09 of 2020 was delivered on 24.03.2021, whereas the applicant was required to file his appeal within 60 days before this Court, that is not later than 24.06.2021. However, the applicant did not lodge any appeal nor application for an extension of time before this court until 30.09.2022 after a lapse of a year later.

It might be true that the applicant had family problems; however, the applicant recovered and obtained a copy of the Judgment on 12.09.2022. Surprisingly, despite the fact that there was an ordinate delay to lodge the application, the applicant did not act immediately after obtaining a copy of

the Judgment until 30.09.2022, a lapse of 18 days after he had recovered and obtained his copy of the impugned Judgment.

Clearly, the affidavit does not address good grounds for his delay. The applicant has not advanced any strong reason why he was not able to lodge the application even after he returned from Moshi. In that regard, I find that the applicant has failed to account for each and every day delayed. See the case of **Bushiri Hassan v Latifa Lukio Mashayo** Civil Appeal No.3 of 2007 (unreported) where the court held; -

*"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 have to be taken."*

Equally, in the case of **Alliance Insurance Corporation & Another v Richard Nestory Shayo**, Civil Application No. 131/02/ of 2018 [Tanzalii 19<sup>th</sup> August, 2020], the Court of Appeal of Tanzania held that:-

*" Since the respondent in the present matter did not file his appeal within a period of 60 days from the date of judgment, and has not even thought of applying for extension of time...no doubt, this amounts to failure to take essential steps. In the circumstances, we are constrained to, and we hereby strike out the notice of appeal..."*

Applying the above holding of the Court, it is vivid that the rules prescribed period within to take necessary steps must be observed, the Court cannot waive those legal requirements. Therefore, since the applicant did not take essential steps to lodge his appeal within time, then this Court has no other option than to hold that the applicant has not passed the legal threshold set for the extension of time.

For the sake of clarity, I have read the case of **Joseph Sweet** (supra). In **Joseph's** case, the applicant in the cited case was in prison and he lost conduct with his relatives, his freedom was limited while the matter. In my view, this cited case is distinguishable from the instant case. In the instant case, unlike the cited case of **Joseph Sweet** (supra), the applicant freedom was unlimited and he was aware that he lost the case at the Tribunal. Therefore the circumstances of these two cases are totally different.

In the upshot, the application is hereby dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 16<sup>th</sup> November, 2022.



A.Z.MGEYEKWA

JUDGE

16.11.2022

Ruling delivered on the 16<sup>th</sup> November, 2022 in the presence of both parties.



A.Z.MGEYEKWA

JUDGE

16.11.2022