

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 610 OF 2022

(Originating from the Land Application No. 183 of 2018 at *the District
Land and Housing Tribunal for Ilala*)

HIDAYA SHUKURU APPLICANT

VERSUS

JOYCE JOSEPH 1ST RESPONDENT

ALLY MOHAMED MKALA 2ND RESPONDENT

ZAINABU ABDALLAH MSEKELA 3RD RESPONDENT

ROBERT EDWARD MASWANYA 4TH RESPONDENT

MICHAEL MAZIKU 5TH RESPONDENT

NASSORO KHAMIS AHMED 6TH RESPONDENT

RULING

Date of last Order 01.12.2022

Date of Ruling 08.12.2022

A.Z.MGEYEKWA, J

The application before this court is for an extension of time to appeal out of time against the decision of the District Land and Housing Tribunal for

Ilala in Application No.183 of 2018. The application was preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019], supported by an affidavit affirmed by Hidaya Shukuru, the applicant. The grounds advanced as the basis for this application was that the applicant failed to obtain copies of the judgment and decree within time. 1st, 2nd, 3rd, 5th and 6th respondents have stoutly opposed the application. Through their joint counter-affidavit deponed by the respondents, they have opposed the application for the failure of the applicant to account for the days of delay.

When the matter was called for hearing on 1st December, 2022 the applicant, 1st, 2nd, 3rd, and 5th respondents were remotely present, unrepresented. They were ready to proceed with hearing. The hearing was done through video conferencing.

The applicant in her submission had not much to say, she urged this Court to adopt her affidavit to form part of her submission. She submitted that the District Land and Housing Tribunal delivered its Judgment, thereafter she fall sick. The applicant went on to submit that after some days she was feeling better hence she hired an Advocate. To assist her to file an appeal. The applicant went on to submit that the respondent's counsel was preparing necessary documents and she made several follow ups

later the legal assistant officer gave her the instant application which she filed before this Court. She urged this Court to hear her out and do justice.

The 5th respondent submitted on behalf of the 1st, 2nd, and 3rd respondents. He urged this Court to adopt his counter affidavit to form part of his submission. He objected the application for an extension of time for the main reason that the decision of the District Land and Housing Tribunal was delivered within time and she had ample time to hire an advocate to file her appeal within time. The counsel went on to submit that the ground for sickness is baseless because her counsel was aware of the matter, therefore, he was in a position to make a close follow-up and file the appeal within time.

In her rejoinder, the applicant reiterated her submission in chief. She added that she did not hire an advocate to handle her case instead she relied upon legal assistance.

Having heard the submissions of the applicant and the 1st, 2nd, 3rd, 5th and 6th respondents.

Having heard the contending submissions of the parties, it now behooves the Court to determine whether this is a fitting occasion to condone the delay involved and proceed to enlarge time to lodge an appeal. The central issues for consideration and determination are whether or not the

applicant has shown good cause to justify his application in terms of section 41 (2) of the Land Disputes Courts Act, Cap.216 [R.E 2019] under which this application is brought. For ease of reference, I reproduce section 41 (2) of the Act hereunder:-

"41 (2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days".

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal; whether there is a point of law of sufficient importance. There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B Business Limited v Amos David Kassanda & 2 others** Civil Application No.48/17/2018 and the case of

Benedict Mumelo v Bank of Tanzania [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

“It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause.”

Gathering from the submissions, the applicant claimed that he delayed filing an appeal because he fell sick and her legal assistant took time to prepare the instant application. The record shows that the decision of the District Land and Housing Tribunal decision was delivered on 26th May, 2022 but it was certified on 28th June, 2022. The days started to account from the day when she obtained the certified copies on 28th June, 2022. The statutory days of filing an appeal ended on 11th August, 2022 and the applicant filed the instant application on 28th September, 2020, a lapse of one month.

The applicant in paragraphs 4 and 5 of her affidavit stated that after receiving the copies of the Judgment she started to search for legal assistance to assist her to file an appeal and she was not able to pay an Advocate. The applicant also stated that the delay was out of her control because she depended on the legal assistant to prepare the legal documents. In my considered view, I find that the applicant has accounted

for the days of delay. I considered the fact that the applicant is still interesting to see that justice is done. I have also considered the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when this court is there to determine the applicant's rights. In my view, once an appeal is eventually lodged before this court, this court will have to determine unpretentious issues brought by the applicant.

I will, in the circumstances exercise my discretion under section 41 (2) of the Land Dispute Courts Act, Cap. 216 [R.E 2019] and proceed to grant the application for an extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Ilala in Land Application No.183 of 2018. I have considered the fact that the Court vacation starts on 15th December, 2022, therefore the applicant should file her appeal not beyond 15th February, 2023. No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 8th December, 2022.



Z.MGEYEKWA

JUDGE

08.12.2022

Ruling delivered on the 8th December, 2022 via video conferencing
whereas the applicant, 2nd, and 5th respondents were remotely present.




A.Z.MGEYEKWA

JUDGE

08.12.2022