

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 29 OF 2020

(C/O Land Appeal No. 7 of 2020 of the District Land and Housing Tribunal for Rukwa
originating from Land Dispute No. 31 of 2019 of Matanga Ward Tribunal)

(J. Lwezaura, Chairman)

ESAU S/O CHOMO APPLICANT

VERSUS

HAMAD S/O SALIM RESPONDENT

RULING

Date: 15 & 21/03/2022

NKWABI, J.:

The applicant had sought for extension of time within which to file an appeal in the District Land and Housing Tribunal, that application was dismissed after the District Land and Housing tribunal found that the application was incompetent.

He is now seeking extension of time to appeal to this court from Land Appeal No. 7 of 2020 and any other order or relief the court would find fit and just to grant. The chamber summons was supported by the affidavit of the applicant.

In the affidavit he attested, after the decision of the District Land and Housing Tribunal for Rukwa, he applied for extension of time within which to lodge an appeal on ground that the District Land and Housing Tribunal dismissed the appeal instead of striking out the appeal.

He further avowed that failure to file the intended appeal as per ruling dated 27/03/2020 was not his fault but because there was an application for extension of time to file an appeal in the District Land and Housing Tribunal which its ruling was delivered on 20/10/2020 and the same was dismissed without costs because the application was incompetent. That justice will be done as the District Land and Housing Tribunal had no jurisdiction to entertain Misc. Land Application No.55 of 2020.

With the leave of this court, the applicant filed a supplementary affidavit on 21/06/2021 where he professed that after the judgment in Land Case No. 31 of 2019 of the ward tribunal, intended to appeal to the District Land and Housing Tribunal. He went to seek legal assistance to Legal Human Rights Consultancy for legal advice against the decision of the ward tribunal and he gave them instructions, the Legal Human Rights Consultancy failed to file in

time hence the appeal was dismissed. He blamed the delay on the lawyer of the Human Right Centre and not himself as he is a lay person.

Further, after giving the instructions, he asserted, he had to take care of his sick son as such, he failed to make follow-up. The circumstances led to this application.

The respondent rejected the averments of the applicant as baseless and that he is on his own accord failed to lodge the appeal in time in the District Land and Housing Tribunal. He is of the view that delay was caused by applicant being satisfied with the decision of the ward tribunal. In the counter-affidavit to the supplementary affidavit, the respondent asseverated that the applicant is not honest at all. He had lodged an application for extension of time for reason that he had not been furnished on time with the copy of the judgment of the ward tribunal but in this application, he is blaming the Human Rights Organization untruly, the respondent avouched.

The respondent too declared that the failure to lodge the appeal on time was due to his negligence. He attached the copy of the affidavit of the applicant

in the District Land and Housing Tribunal dated 27th May 2020 to substantiate his argument.

During the hearing of this application, Ms. Tunu Mahundi, learned advocate, appeared for the applicant. The respondent appeared in person, unrepresented.

In submission, Ms. Mahundi maintained that the appellant delayed to get legal assistance to prepare the petition of appeal and delayed lodging the same while he had given them instruction timely. When it was lodged in the District Land and Housing Tribunal the petition of appeal was refused admission for being time barred. The applicant does not know the law, she argued

Ms. Mahundi further maintained that the Legal Aid Clinic filed an application in the District Land and Housing Tribunal but was found to be incompetent. Thereafter, the Legal Aid Clinic failed to give cooperation to the applicant. She shouldered the blame on the Legal Aid Clinic. Ms. Mahundi too, said the applicant was not negligent citing **Felix Tumbo Kisima v Tanzania**

Commercial Co. Ltd & Another [1997] TLR 57. She maintained that the delay is technical one citing **Fortunatus Masha v William Shija** [1997] TLR 213. She added, there is a great chance of success if the applicant is granted extension of time to appeal. There were legal irregularities as the District Land and Housing Tribunal violated section 14 of the Land Disputes Courts Act Cap 216 R.E. 2019. She also referred this court to the case of **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, CAT (unreported). She prayed the application be granted.

The respondent replied to the effect that the applicant is changing his grounds, in the District Land and Housing Tribunal he said he was delayed by the Ward Tribunal as it delayed to supply him with the copy of the judgment of the Ward Tribunal. He insisted that the applicant is merely negligent and is a liar. He prayed the application be dismissed.

In rejoinder, Ms. Mahundi reiterated her submission in chief and insisted that the applicant was not negligent. She urged this court to consider the irregularities.

After considering this application (affidavit) and submissions of the applicant, I have to observe that it is mundane law that, 'litigation has to come to an end', it cannot be open ended. That was stressed in **Stephen Masato Wasira v Joseph Sinde Warioba and The Attorney General [1999] TLR 334**. It is to that end that for the court to extend time within which a party to do an act which ought to have been done and time has lapsed, sufficient reason has to be assigned. That is the import of section 38 (1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 especially on its proviso.

I have seriously considered this application for extension of time within which the applicant to lodge the intended Misc. Land Appeal out of time to this court. I am of the firm view that this application has to go down swinging. I think, at this juncture, I should note that the decided cases of the Court of Appeal, Ms. Mahundi is relying on to justify the negligence of the Legal Aid Clinic as technical delay are decisions of a single Justice of Appeal in each case while the decisions that find that negligence is inexcusable are the decisions of three Justices of Appeal which I will demonstrate at a later stage of my discussion.

One of the basis for bringing this application, is that the decision of the District Land and Housing Tribunal is tainted with illegality in the decision as the District Land and Housing Tribunal dismissed the Land Appeal instead of striking it out. The appellant is arguing that the District Land and Housing Tribunal was empowered only to strike out the appeal which was time barred and not to dismiss it. The respondent is not impressed by the submission and says that is not the case.

In my view, had Ms. Mahundi seen the decision of the Court of Appeal in the case of **Ali Shabani & 48 Others v. Tanzania National Roads Agency (TANROADS) & Another**, Civil Appeal No. 261 of 2020, CAT (unreported) would have not raised this ground as a ground for this court to extend time. In the case I have cited above, it was held:

"As the suit was time barred, the only order was to dismiss it under section 3(1) of the LLA. ..."

The alleged illegality ground cited by Ms. Mahundi is not, with respect, therefore, apparent on the face of the record as envisaged in **Omari R.**

Ibrahim v Ndege Commercial Services Ltd, Civil Application No.

83/01 of 2020 CAT (unreported):

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said in VALAMBIA's case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right be granted extension of time if he applies for one. The court there emphasized that such points of law must be of sufficient importance and, I would add that must also be apparent on the face of records, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."

In the circumstances what is alleged as illegality, does not meet the standard as above set by the Court of Appeal. That ground advanced for extension of time is rejected and dismissed.

In his supplementary affidavit, the applicant raises another ground that it was not his fault as it was a Legal Aid Clinic that delayed in lodging his appeal

and equated it to a technical delay. On his side, the respondent argued that the applicant was negligent and a liar.

I agree with the respondent. Negligence of the applicant or his advocate cannot be good ground for extension of time, see **William Shija & Another v Fortunatus Masha [1997] TLR 213** (CA), where it was said a technical delay is not excusable, but it amounts to negligence which is not good cause for extension of time. For sake of clarity, I quote the holding of the Court of Appeal:

"In determining whether the application should nonetheless be granted, the court took into account the counsel had been negligent in adopting the correct procedure and this could not constitute sufficient reason for the exercise of the court's discretion."

See as well **Umoja Garage v National Bank of Commerce, 1997] TLR 109**. I place reliance too, on **Ngao Godwin Losero v Julius Mwarabu**, Civil Application No. 10 of 2015 CAT (unreported) where it was said:

"As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for

*instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness.”*

The claim that the applicant was not at fault and that it was his counsel from the Legal Aid Clinic who was negligent is found to lack merits and it is dismissed. I, however, hasten to observe that technical delay like what happened in the case of **Napaya Kilevori v Ngida Loisule**, Misc. Civil Application No. 81 of 2019 the decision of the High Court indeed, is excusable in the terms as this court stated that:

“That the days utilized by the appellant to get copies of judgment and decree to be excluded from computation of delay.”

In the circumstances of this application, the applicant has failed to account for each day of the delay, violating **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported).

I further observe that it has been stated, in numerous occasions, in our jurisdiction that extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time as it was stated in the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported).

The above authority is relevant against the applicant's claim that he was not able to make follow-up as he had a sick child (son) after he had given instruction to the Legal Aid Clinic. The applicant, in his affidavit, did not attach any medical chit to prove his allegation. That contravened the requirement of the law pronounced in the case which his counsel cited, the case of **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was held:


"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."

In fine, the applicant has failed to account for each day of the delay. He has demonstrated negligence and or has failed to put to the court any material (medical chits) for his alleged attending to his sick son. No sufficient cause of the delay has been demonstrated to this court by the applicant. In addition, the alleged illegality is not apparent on the face of the record. I dismiss the application as it is devoid of merits. I make no order as to costs as the respondent did not pray for the same.

It is so ordered.

DATED at **SUMBAWANGA** this 21st day of March, 2022.




J. F. NKWABI
JUDGE