

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL NO. 25 OF 2020**

(C/O Misc. Land Application No. 103 of 2019 of District Land and Housing Tribunal for  
Rukwa)

(J. Lwezaura, Chairman)

**FREDINAND NZYUNGU ..... APPELLANT**

**VERSUS**

**CLEDO NKANGA ..... 1<sup>ST</sup> RESPONDENT**

**SABAS KASONGO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

Date: 13/12/2021 & 07/02/2022

**Nkwabi, J.:**

With the appeal filed in this court, the appellant is slamming the decision of the District Land and Housing Tribunal for Rukwa. He had earlier filed an application for extension of time within which to file an application to set aside a dismissal order in Land application No. 36/2015 which was dismissed on 12/01/2018.

In dismissing the application with no order as to costs, the District Land and Housing Tribunal had these reasons **1**. He failed to put materials before the court to enable it to enlarge the time as prayed. The materials which the



appellant failed to put before the trial tribunal are the judgment which ordered for his alleged imprisonment and medical sheets proving that he was sick. He thus violated the holding in **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported):

*"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."*

2. The appellant failed to account for each day of the delay which is inordinate delay. The learned trial tribunal chairperson placed reliance on **Bushiri Hassan v Latifa Lukio Mashayo, Civil Application No. 192/20 of 2016** CAT (unreported):

*"... 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."*

To challenge the decision of the trial tribunal, the appellant recorded one ground of appeal which is that the honourable chairman erred in law and facts in dismissing the applicant's application for setting aside the dismissal

order dated 12/01/2018 in application number 36/2015 out of time while the applicant adduced sufficient reasons of his delay to file the said application. He thus prayed this appeal to be allowed with costs. The respondents resisted the appeal arguing that the appellant failed to adduce sufficient cause for the delay. They prayed for the dismissal of the appeal and the trial tribunal's decision be upheld with costs to the respondents.

When the matter was called up for hearing, the appellant appeared in person while the respondents were represented by Mr. James, Learned Advocate.

In his submissions, the Appellant argued that both lower tribunals did not do him justice as the matter was not heard be it in the trial tribunal or the first appellate tribunal.

He maintained, his case was illegally dismissed without justification he was in prison and too he was sick. He gave such reasons for filing his case out of time and sent documentary evidence for his reasons of his delay for those reasons he prayed his appeal be allowed.

Mr. Lubusi, learned counsel, in reply submitted that the grounds which have been given by the appellant are new. They be dismissed.

The appeal is No. 25/2020 challenging the decision of the District Land and Housing Tribunal in Land Application No. 103/2019. The application was dismissed. The cases are guided by law of Limitation Act. The matter was time barred. The law gives power to court for extensions of time as per its discretions, he submitted. The matter which is at hand, the appellant in application No. 103/2019 failed to assign sufficient reasons for the tribunal to extend time. Mr. Lubusi relied on **Jacob Shija V. Ms. Food Agency Civil Application No. 440/08/2017** (unreported) (CAT). In which the Court of Appeal of Tanzania decided that even a delay of one day good reasons should be assigned. He ought to have proved his incarceration but he failed.

He also failed to prove his sickness. So, his application was dismissed in accordance with the law. The appellant delayed for six months. It was an inordinate delay, Mr. Lubusi explained.

The trial tribunal was justified in its decision, litigation has to come to an end. He prayed the appeal be dismissed. The appellant be seen as a nuisance. Costs of the appeal be borne by the appellant, Mr. Lubusi added.

Rejoining his submissions, the Appellant contended while disputing the submission of the counsel for the respondents that he sent the copies of the judgment to the trial tribunal. He also denied to have delayed for six months. He added that he refused to tender the copy of the judgment which imprisoned him as that was a different case to this current one. He implored the appeal be allowed with costs.

I have given due consideration of the submissions of both parties. I start with the reason for the dismissal of the application which is that the applicant failed to put the material for the court to use its discretion and extend time within which to file an application for setting aside the dismissal order. It is common place that in order for the court to extend time, one has to put forward the material for the court to exercise its discretionary power. That is the holding in **Regional Manager TANROAD Kagera v Ruaha**

**Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM  
(Unreported):**

*"What constitutes "sufficient reason" cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules."*

Recourse being had to the decision of Makame, Ag. J., as he then was, in **Tanzania Tailors v. Keshvaji Lalji [1970] H.C.D. no. 236** where he put it:

*"... As it is, time having expired, the successful party must have assumed that the fight was over, and unless sufficient reason is shown, which it has not been, it would be unfair to dislodge him from his seat of victory."*

The question now is, did the appellant place the necessary materials for the trial tribunal to grant the application? The trial tribunal demanded for the judgment of the court which sentenced him to serve a prison term. By that

judgment, I think, the trial tribunal wanted to ascertain itself that indeed the appellant was precluded from prosecuting his case and delayed to file the application for extension of time due to his being imprisoned. As conceded by the appellant himself, he did not send the judgment because in his view that was a different case. In addition, the appellant did not attach the proceedings and order/ruling of the tribunal in respect of the dismissal order for this court to ascertain that the appellant was not to blame. However, the respondents themselves in their counter affidavit in the trial court seemed to concede the incarceration and sickness of the appellant. Failure to do that entitled the court to accord adverse inference to the effect that there was no such sentence or that although the appellant was sentenced and imprisoned, such term did not cover the whole period the appellant delayed. Even the dismissal order itself was not attached for the court to determine the reasons. It should be noted that the application was lodged in 2015, the proceedings of the case ought to have been attached as well.

Be that as it may, incarceration does not preclude a party to a case to proceed with it. That is why when one is sued, summons to the defendant who is in prison will be served in accordance to **Order V Rule 24 of the**

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**Civil Procedure Code, Cap 33 R.E. 2019.** That means, the appellant would have notified the trial court that he was in prison so that summons for him to appear in court would be served through the officer in-charge of the prison. Ignorance of the procedure or law cannot be said to assist any person, see **Criminal Application No. 1/2016 Ally Kinanda & 2 Others vs The Republic CAT At Dodoma (July 2018) Mwarija JA:**

*"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 alleged sickness of the appellant too is naïve. This is because, it does not show that the appellant was admitted, unlike the situation in **Leonard Magesa v. M/S Olam (T) Ltd Civil Application No.11 of 2015 (CA)**. In



**Magesa's** case, (supra) the appellant was admitted in hospital but in this case the appellant was not or at least he has failed to prove he was admitted in hospital for his illness. That ground by the appellant for praying for extension of time is therefore baseless.

It is also averred that the appellant filed an application which was struck out. Still even after such application was struck out yet he delayed for 25 days to the day he finally lodged the Misc. Land Application No. 103/2019 for extension of time. No reasons were assigned by the appellant for the delay for the 25 days. He was not prompt in filing the application in the District Land and Housing Tribunal which is the subject of this appeal. Then the trial tribunal was entitled to reject the application and dismiss it.

It is elementary law which is settled in our jurisdiction that each day of the delay must be accounted for. In **Civil Application No. 218 of 2016 Interchik Company Limited v Mwaitenda Ahobokile Michael** (unreported) CAT where it was held:

*"It is this Court's firmly entrenched position that any applicant seeking extension of time under Rule 10 of the Rules is required to account for each day of delay."*

See also **Tanzania Coffee Board v Rombo Millers Ltd Civil Application No. 13 of 2015** CAT (unreported), as well as **Bariki Israel v R. Criminal Application No. 4 of 2011** (unreported) CAT:

*"... in an application for extension of time, the applicant has to account for each day of the delay. This applicant has failed to do ..."*

The appellant did not account for each day of the delay, as such, the District Land and Housing Tribunal was justified in its decision.


I should also not here for avoidance of confusion that the attached ruling of the District Land and Housing Tribunal is in respect of Misc. Land Application No. 103/2019 and not application No. 36/2015 as indicated by the appellant in the ground of appeal.

Based on the above discussion, I uphold the decision of the District Land and Housing Tribunal. Consequently, I dismiss the appeal with costs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 7<sup>th</sup> day of February, 2022.



  
**J. F. Nkwabi**  
**Judge**