

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

**MISC. LAND CASE APPLICATION No.425 OF 2021**

**BETTY KEVELA.....APPLICANT**

**VERSUS**

**RAMADHANI SHOKI.....RESPONDENT**

Date of last Order: 04.04.2022  
Date of Ruling: 25.04.2022

**RULING**

**V.L. MAKANI, J**

The applicant has moved this court under section 41(1) and (2) of the Land Disputes Courts Act, Cap 216 RE 2019 and Order XLIII Rule 2 of the Civil Procedure Code Act, CAP 33 RE 2019 (the **CPC**). She is seeking for extension of time to lodge an appeal against the judgment of Ilala District Land and Housing Tribunal (the **Tribunal**) delivered on 23/05/2021. The application is supported by an affidavit of the Applicant. The respondent filed a counter affidavit in opposition.

With leave of the court the application was argued by way of written submissions. Mr. Killey Mwitasi, Advocate drew and filed submissions

on behalf of the applicant; while Mr. Onesmo Kinawari, Advocate drew and filed submissions in reply on behalf of respondent.

Arguing the application, Mr. Mwitasi said that an appeal has to be preferred to the High Court within 45 days from the date of the decision. That the applicant was availed with the judgment and decree on 19/07/2021 after the lapse of 56 days. He said that the applicant promptly went to search for an advocate to help her with the filing of this application. He stressed that the delay in filing the appeal was caused by the fact that the copy of the judgment was issued late despite the applicant's efforts to request the same on time. To support his position, Counsel relied on the case of **Lewin Bernard Mgala vs Lojasi Mutuka Mkondya and 2 others, Land Appeal No.33 (HC-Mbeya)**(unreported). He further stated that, the respondent in his counter affidavit has not challenged the reasons for delay as he only ended up disputing the facts and putting the applicant to strict proof in respect of the applicant's affidavit. He thus relied on the case of **East African Cables (T) Limited vs Spenco Services Limited, Misc. Application No.61 of 2016 (HC-Commercial Division)**(unreported). Counsel prayed for the application to be granted.

In reply, Mr. Kinawari said that the applicant herein has no *locus standi* since she is not the owner of the suit land. That the property belongs to one Richard Gilawoneka Kevela. Counsel further said that in an application for extension of time, the applicant is supposed to account for each day of delay and show sufficient cause. He said parties are bound by their own pleadings and in the applicant's affidavit there is no evidence to account for her delay. That is from 19/07/2021 when she was availed with the copies to 18/08/2021 when this application was filed, which is more than 29 days. He said the applicant was negligent as she has not accounted for the delayed days. He said the cases of **FINCA (T) Ltd & Another vs. Boniface Mwalusaka, Civil Appeal No.589/12** (CAT -Iringa) (unreported) and the case of **Bushiri Hassan vs Latifa Lukiko Mashayo, Civil Application No.3 of 2007** (unreported) requires an applicant for extension of time to account for every day of delay. He said that the applicant has demonstrated negligence on her part therefore this application lacks merit. He prayed for this application to be dismissed with costs.

In rejoinder, Mr. Mwitasi said that respondent contravened section 19 and Order VIII Rule 2 of the CPC which requires preliminary objection to be raised in the pleadings and at the earliest opportunity. He said the objection ought to be argued at the appeal stage. He said further that the law provides for 45 days for someone to read judgment, do research, and decide whether to appeal or not. Thus, the applicant acted within 45 days from the date of receipt of the judgment to make decision and lodging this application.

The main issue for discussion is whether this application has merit. However, I shall first address the issue of applicant's *locus standi*, as put forward by advocate Kinawari for the respondent. It is worth to note that this is an application for extension of time and therefore what is to be addressed is whether sufficient reasons have been advanced for the delay. In the premises, Mr. Kinawari's objection on *locus standi* at this stage would be misplaced. As correctly stated by Mr. Mwitasi, the said objection is valuable if it is discussed at the earliest stage possible in the intended appeal in case this application succeeds.

The applicant's main reasons for delay as contained in her affidavit are two; that there was a delay in receipt of the certified copies of the judgment by the Tribunal, and that soon after securing the said copies she started searching for an advocate and eventually filed this application as she was already out of the 45 days prescribed by the law. Mr. Kinawari in reply apart from the issue of *locus standi*, which has been addressed above, also insisted that the applicant did not account for the delay as she spent another 29 days from when she was availed with certified copies.

It is a settled principle of the law that an application for extension of time is entirely the discretion of the court to grant or refuse it, and extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. (See **Mumello vs. Bank of Tanzania Civil Appeal No. 12 of 2002 (CAT-Dar es Salaam** (unreported).

The records are clear that the impugned decision was delivered on 23/05/2021. The applicant applied for the certified copies on 01/06/2021 and the said copies were certified ready for collection on 19/07/2021. This application was filed on 18/08/2021. It took the

Tribunal 49 days from when the request was made to avail the copies to the applicant. However, it took the applicant one month to file this application on 18/08/2021. She claims to have been looking for a lawyer to assist, in my view this argument does not hold water because on 01/06/2021 when the applicant applied for the copies, she knew that she was going to appeal and there was an inference that she would obviously need a lawyer to assist. It took the applicant 78 days from the day he wrote request later to the date of filing this application. Common sense would depict that it is far from the truth that the applicant in those 78 days was looking for a lawyer to assist. In the same line it is unrealistic that from 19/07/2021 when the copies were availed to the applicant, to 18/08/2021 when this application was filed the applicant was looking for legal assistance. In other words, the period of about 30 days has not been properly accounted for by the applicant. In the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007**, (unreported) is among the leading authorities in which it was stated that:

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

Basing on the foregoing, I find that the applicant has failed to account for the delay in the filing of the appeal. This application therefore is without any merit and is hereby dismissed with costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**25/04/2022**



The seal of the High Court of Tanzania, Land Division, is circular. It features a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" at the top and "LAND DIVISION" at the bottom, separated by two stars.