

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 232 OF 2021**

(Arising from Land Appeal No. 48 of 2020 in the District Land and Housing Tribunal for Ilala, Originated from Kivule Ward Tribunal in Land Dispute No. A/008/20189)

FLORA MOSES APPLICANT

VERSUS

HAWA MWASYETE RESPONDENT

RULING

Date of last Order: 10.05.2022

Date of Ruling 10.05.2022

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under section 38 (1) of the Land Disputes Courts Act, Cap.216 [R.E 2019]. The applicant urged this court to extend the time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Ilala in Land Appeal No.48 of 2020, originating from the Kivule Ward Tribunal in Application No. A/008/20189.

The application is supported by an affidavit deponed by Flora Moses, the applicant. The respondent resisted the application and has demonstrated his resistance by filing a counter-affidavit deponed by Hawa Mwasyete, the respondent.

When the matter was called for hearing on 10th May, 2022, the applicant appeared in person, unrepresented while the respondent enjoyed the legal service of Mr. Theolphilisi Honest, learned counsel.

Submitting in support of the application, the applicant was very brief, she urged this court to adopt the applicant's affidavit and form part of her submission. The applicant submitted that the District Land and Housing Tribunal for Ilala delivered its decision on 2nd September, 2020. She submitted that on 1st September, 2021 she wrote a letter requesting copies of Judgment and made several follow-ups at the tribunal to obtain the said copies without any success. Astonishing she received a notice of execution on 9th May, 2021.

The applicant continued to submit that the delay was not caused by her negligence but it was the respondent's tactic used to delay her rights. The applicant continued to submit that she was dumbfounded to find out that the Judgment was delivered on 23rd September, 2021 while she was

making close follow-ups but they did not give her the said copies. She claimed that if this court will not grant her application then the respondent will demolish her house and she will suffer loss.

Objecting to the application, Mr. Honest, learned counsel confutation was strenuous. The learned counsel for the applicant urged this court to adopt the respondent's counter-affidavit and form part of his submission. He came up forcefully and contended that the applicant has failed to account for each day of delay for the court to grant his prayers thus the application is devoid of merit. He went on to submit that the impugned decision was delivered on 2nd September, 2020 and the applicant filed the instant application on 20th May, 2021, a delay of 9 months.

Mr. Honest claimed that the applicant obtained his copies on 23rd February, 2021, and lodged the instant application she lodged the instant application after three months. He strenuously argued that the reason that the applicant was making follow-ups to receive the copies is baseless since she lodged the present application after three months. It was his submission that the applicant was required to account for each day of delay. To buttress his contention she cited the case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of

2010. Mr. Honest continued to argue that the applicant did not state the reasons for her delay. Fortifying his stance the learned counsel for the applicant cited the case of **Principal Secretary Ministry of Defence & National Service v Duram P. Valambhia** [1992] TLR 387. The learned counsel for the applicant did not end there he claimed that the applicant lodged the instant application after being served with the execution order.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the entirety of the applicant's application with costs.

In his short rejoinder, the applicant's had nothing new to rejoin.

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

To begin with, I wish to restate that it is settled law that an application for an extension of time is grantable where the applicant presents a credible case to warrant a grant of such extension. This means that a party asking for an extension of time must justify the reason for the extension. The law also requires the applicant to act equitably as it was held in the

case **Nicholas Kiptoo Arap Korir Sa/at v IEBC & 7 Others**, Supreme Court of Kenya. Application 16 of 2014.

After taking into consideration what has been stated in the affidavit filed by the applicant and the applicant's advocate submission I would like to make an observation that, the applicant's quest for an extension of time is premised on one ground, delay to receive the copies of the Judgment within time. Throughout her submission, the applicant complained that she made several fellow ups to obtain the copies of the judgment without avail.

Unfortunately, her submission is not backed up with any evidence. Unfortunately, the physical follow up are not proved by any document. The applicant did not attach any letter which proves that she requested the copies of the Judgment. In her affidavit, she did not state when she wrote the said letter. The applicant's claims that she wrote the letter requesting the copies of Judgment in September, 2021 is from the bar, the affidavit is silent.

As rightly pointed out by Mr. Honest, the applicant has failed to account for the days of delay from the purported date when she received the copies on 23rd February, 2021 to the date when she lodged the present application for an extension of time to file an appeal on 20th May. 2021.

Three elapsed and there was no any cogent explanation for her delay. The requirement of accounting for every day of delay has been emphasized by the Court of Appeal in numerous decisions; examples are such as the recent case of **FINCA (T) Ltd and another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal Iringa, (unreported) delivered in May, 2019 and the case of **Karibu Textile Mills v Commissioner General (TRA)**, Civil Application No. 192/20 of 2016, **Tanzania Coffee Board v Rombo Millers Ltd**, AR CAT Civil Application No 13 of 2015 (unreported) the Court reiterated its decision in **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No 3 of 2007 (unreported) which had held that:-

“Dismissal of an application is the consequence befalling an applicant seeking extension of time who fails to account for every day of delay.”

It should be noted that extension of time is not a right of a litigant against a Court but a discretionary power of courts which litigants have to lay a basis [for] where they seek [grant of it] the same was held by the Supreme Court of Kenya in the case of **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others**, Sup. Ct. Application No. 16 of 2014. I recapitulate that, I accede to the respondent's Advocate's views that the applicant has failed

to account for each day of delay, therefore, the applicant's application is devoid of merit.

In the upshot, this application fails and the same is accordingly, dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 10th May, 2022.


A.Z. MGEYEKWA
JUDGE
10.05.2022


Ruling delivered on the 10th May, 2022 in the presence of the applicant and Mr. Theophilisi Honest, learned counsel for the respondent.


A.Z. MGEYEKWA
JUDGE
10.05.2022
