

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 74 OF 2022**

*(Originated from the District Land and Housing Tribunal for Kinondoni at  
Mwananyamala in Land Application No. 21 of 2016)*

**HAJI ISSA ..... APPLICANT**

**VERSUS**

**TUWEMO MZEE MPANGILE ..... RESPONDENT**

**RULING**

*Date of last Order 13.05.2022*

*Date of Ruling 17.05.2022*

**A.Z.MGEYEKWA, J**

The Court's discretion is sought to grant an extension of time to lodge an appeal against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala decision in Land Application No. 21 of 2016. The application, preferred under the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is supported by two affidavits; the applicant's own affidavit and Mr. Mark

Stephen Lebba, learned counsel for the applicant in which grounds for extension of time are set out. The application was opposed by the respondent who filed a counter-affidavit sworn by Tuwemo Mzee Mpangile, the respondent.

When the matter was called for hearing on 13<sup>th</sup> May, 2022 the applicant had the legal service of Mr. Mark Lebba, learned counsel and the respondent enjoyed the legal service of Mr. David Malima, learned counsel.

The applicant through his Advocate urged this court to adopt the two affidavits and form part of his submission. Mr. Mark began by acknowledging the fact that the grant of extension of time is conditioned on the applicant showing sufficient reasons. He prayed for this court to grant the applicant's application for the reasons that the applicant delayed to receive the copies of the District Land and Housing Tribunal. He submitted after vigorous follow-ups the applicant received the copies on 4<sup>th</sup> January, 2022.

The learned counsel for the applicant submitted that the statutory 45 days to appeal expired on 13<sup>th</sup> January, 2022, thus, the applicant found that he was out of time to lodge an appeal. Mr. Mark went on to submit that this court has discretionary power to extend time to appeal on good cause shown by the applicant. To bolster his submission he cited section

41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He stated that there are several decisions where the court extended time to appeal out of time and criteria which were taken to account; first, the decree of prejudice that the respondent may be subjected to if the application is granted, in his view, the respondent will not suffer in case the application is granted. Secondly, the length of the delay from the date when the District Land and Housing Tribunal delivered its decision. In his calculation, the delay is 43 days from the date when the applicant lodged the application.

Insisting, Mr. Mark submitted that after the expiration of 45 days, the length of the period is not excessive because it was the duration of court vacation. To support his submission he cited the case of **Keith Horan & another v Zameer Sherali Rashid & 2 others**, Civil Application No. 105/15 of 2018. Stressing on the point of sufficient cause, Mr. Mark was certain that the applicant has sufficient cause to warrant this court to extend the time for the applicant to file an appeal out of time.

Lastly, the learned counsel for the applicant prayed for this court to grant the application.

Mr. Malima strongly opposed the applicant's Advocate contention. He hastened to conclude that the applicant has not stated good cause for an extension of time. The learned counsel for the respondent argued that the

District Land and Housing Tribunal decision in Application No. 21 of 2016 was made on 29<sup>th</sup> November, 2021, and the certified copies were availed to the applicant on 13<sup>th</sup> January, 2022, yet the applicant failed to lodge his appeal within time. He went on to argue that the applicant has failed to account for days of delay. To buttress his contention he cited the case of **Bushir Hassan v Latifa Mashayo**, Civil Application No. 3 of 2007 (unreported). He continued to argue that a delay of a single day must be accounted for otherwise there will be no point in having rules prescribing the period on which certain steps have been taken. Mr. Malima argued that the applicant's counsel failed to file the instant application instead he opted to attend other matters in Kilosa and he traveled to his village. He valiantly argued that there is no proof when the counsel was in his village. He added that the applicant's counsel did not provide detailed information as to why there was no any other Advocate who could handle the applicant's appeal on his behalf.

The learned counsel for the respondent continued to argue that from the forgoing, they firmly submit that the applicant has not only failed to state sufficient cause of delay but also miserably failed to account for days. Fortifying his argument he cited the case of **Isaack Sebegele v Tanzania Portland Cement Co. Ltd**, Civil Reference No. 26 of 2004, **Mr. Manson Shaba & 143 others v The Ministry of Works & another**, Civil

Application No. 244 of 2015, and **Kidodi Sugar Estate & 5 others v Tanga Petroleum Co Ltd**, Civil Application No. 110 of 2009.

On the premises, the learned counsel for the respondent invited this court to dismiss the application in its entirety with costs.

Rejoining, the learned counsel for the applicant reiterated his submission in chief. He submitted that his Law Firm comprises only one Advocate.

Having heard the contending submissions of the learned counsels for the applicant and respondent, 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 before this Court.

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. 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.”*

The applicant and his learned counsel in their affidavit have tried to convince this Court that the applicant was delayed to obtain certified copies, and at that time Mr. Mark Labba was on his annual leave in his village. Thus, on 26<sup>th</sup> January, 2022 he handed over the certified copies to his counsel. The record reveals that the impugned judgment was delivered on 27<sup>th</sup> November, 2021 and the applicant obtained the certified copies two months later but the applicant could not lodge the appeal because his Advocate was on his annual vacation. To prove that the applicant was telling the truth in his assertion, Mr. Mark filed an affidavit and stated that after receiving the certified copies, he was not able to file an appeal within time because he was on his annual leave. In my view, the applicant and his counsel have managed to adduce sufficient cause

for the delay to file an appeal within the time and they have also accounted for the days of delay when the applicant obtained the certified copies on 26<sup>th</sup> January, 2022. See paragraphs 4, 5 and 7 of the learned counsel's affidavit.

In a chronological account of days of delay, Mr. Mark narrated the whole process of filing the instant application. The time when his counsel was on his vacation is counted for and the time Mr. Mark was attending another case at the District Land and Housing Tribunal was proved by attaching bus tickets to and from Kilosa via Morogoro. See paragraph 9 of the learned counsel's affidavit. Therefore, I am not in accord with Mr. Malima that the applicant has not stated sufficient cause for his delay and accounted for each day of delay.

There are numerous authorities of the Court of Appeal of time in regard to accounting for each day of delay as a ground for extension of time. In the case of **FINCA (T) Ltd and Another v Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 Court of Appeal of Tanzania at Iringa, (unreported) and the case of **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 an extension of time who fails to account for every day of delay."*

Equally, in the same case of **Bushiri Hassan** (supra), the court held:-

***“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” Emphasis added.***

Riding on the wisdom sprinkled from the cited authorities and the above findings, it is clear that the applicant and his counsel have accounted for every single day of delay and adduced sufficient cause of delay.

In the upshot, I am convinced that the applicant has presented a credible case sufficient to convince the Court to grant an extension of time. Accordingly, the application succeeds and the applicant is given thirty days within which to institute an appeal to this court.

Order accordingly.

Dated at Dar es Salaam this date 17<sup>th</sup> May, 2022.



  
A.Z.MGEYEKWA

JUDGE

17.05.2022

Ruling delivered on 17<sup>th</sup> May, 2022 via audio teleconference whereas, the respondent was remotely present.





*AZ*  
A.Z.MGEYEKWA  
JUDGE  
17.05.2022