

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

MISC. LAND CASE APPLICATION NO.707 OF 2021
*(Arising from the District Land and Housing Tribunal for Ilala at Mwalimu House in
Application No. 12/2013, by A.R Kirumbi)*

ABRAHAM FORD MWAKATUNDU.....APPLICANT

VERSUS

GODLISTEN UROMI.....1ST RESPONDENT

ZUHURA A. MOHAMED.....2ND RESPONDENT

R U L I N G

Date of Last Order: 10.05.2022

Date of Ruling: 30.05.2022

T. N. MWENEGOHA, J.

This application was brought under Section 41(2) of the Land Courts Disputes Act, Cap 216, R. E. 2019. The applicant is seeking for extension of time order so as to file an appeal out of time, against the decision and orders of the District Land and Housing Tribunal for Ilala, given by Hon. A. R. Kirumbi, learned chairperson in Land Appeal No. 12 of 2013, dated 25st of August, 2021. The application has been accompanied by the affidavit of the applicant, Abraham Ford Mwakatundu.

The same was heard by written submissions. Advocate Benedict Bahati Bagiliye, appeared for the applicant while the respondent was represented by Advocate Deiniol Joseph Msemwa.

In his submissions, the counsel for the applicant maintained that, the delay was caused by the tribunal's failure to supply him with the copies of the impugned judgement and decree. That the judgment was delivered on the 25th August, 2021. On the 07th September, 2021 the applicant requested for the copies of the judgment and decree, but he was given the same on 19th November 2021. That before, he had made several follow ups at the tribunal to be given the said documents in vain. That was on 13/9/2021, 22/9/2021, 28/9/2021, 01//10/2021, 08/10/2021 and on 12/10/2021.

That, he made a request in writing for the same on the 29th of October 2021. The applicant's counsel went on to argue that, however, when the documents were supplied to him, they showed that they were ready for collection since 08/09/2021, just 14 days from the date of judgment.

Another reason given by the applicant to file the instant application is the existence of illegalities in the proceedings and judgment of the tribunal. He cited the case of **Robert s/o Halima versus The Republic, Criminal Appeal No. 42 of 2019, Court of Appeal of Tanzania, (unreported)**, where it was held that, in an application for extension of time, the court cannot confine itself to determine the illegalities.

In reply, the counsel for the respondent prayed for the application to be dismissed as the applicant has no sufficient reason. The copies for judgment were ready for collection since the 8th of September 2021. The time allocation of 45 days for appealing against the decision in question lapsed in October, 2021. As for illegalities, the respondents counsel insisted that the same do not exist.

Having considered the submissions of the counsels for the parties, the affidavit in support of the application and the counter affidavit, the issue for determination is whether the application has merit. In answering this issue I will rely on the case of **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported)** as quoted in **Victoria Real Estate Development Ltd versus Tanzania Investment Bank and Others, Civil Application No. 225 of 2014, Court of Appeal of Tanzania at Dar Es Salaam (unreported)** that;-

"what constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. It is upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

In this case, the applicant gave two reasons for consideration by this Court in entertaining the instant application. Firstly, is the fact that the District Tribunal failed to supply the copies of the impugned decision within time. I find this reason to be baseless, as per the applicant's affidavit it is obvious that, he didn't request the same within time. The judgment was delivered on the 25th August, 2021. The applicant made a request in writing for the copies of the said decision on the 29th of October 2021. 34 days after the delivery of the judgment.

He went to collect the same on 19th November 2021. He claimed that, before that, he had made several follow ups at the tribunal to be given the said documents in vain. That was on 13/9/2021, 22/9/2021,

28/9/2021, 01//10/2021, 08/10/2021 and on 12/10/2021. However, he failed to provide any evidence to prove that he made such follow up. Only statements were given by the applicant through his affidavit, see paragraphs 2-13. Moreover, even if this Court agrees with the applicant's assertion that the copies of the impugned decision were supplied to him late, still there is a period unaccounted for by the applicant. This is from 19th of November, 2021 to 8th of December, 2021 when the application was filed. Therefore, the applicant has failed to account for each day of delay as required by the Law.

On the second reason it was contended that, the decision of the District Tribunal contains illegalities. This point also cannot stand. The applicant's counsel instead of showing the illegalities in question, he resorted in giving and arguing the grounds of the intended appeal. Hence, the applicant in my settled opinion has failed to account for his delay in taking the required steps within time. His application is devoid of merits owing to the reasons I have given herein above.

In the end, the application is dismissed with costs.




T. N. MWENEGOHA

JUDGE

30/05/2022