

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

**MISC. LAND APPLICATION NO. 454 OF 2021**

*(Arising from Land Application No. 14 of 2019 of the District Land and Housing Tribunal of Mkuranga at Mkuranga delivered on 1<sup>st</sup> July 2021)*

**RAMADHANI ALLY MAHEGE** *(Administrator of the Estate of the late Mzee Salumu Mahenge)* ..... **APPLICANT**

**VERSUS**

**SAIDI ATHUMANI NDAMBASI** ..... **RESPONDENT**

*Date of last Order: 28/04/2022*

*Date of Ruling: 17/06/2022*

**RULING.**

**I. ARUFANI, J**

The applicant filed in this court the application at hand seeking for extension of time within which to file appeal in the court against the decision made in Land Application No. 14 of 2019 of the District Land and Housing Tribunal for Mkuranga at Mkuranga (hereinafter referred as the tribunal). The application is made under section 41 (2) of the Land Disputes Courts Act, Cap 216, R.E 2019 and is supported by affidavit sworn by the applicant.

The application was opposed by the respondent who filed his counter affidavit in the court. When the application came for hearing the

applicant was represented by Ms. Salha Hamisi Advocate and the respondent was unrepresented. By consent of the parties the application was argued by way of written submission.

To support the application the counsel for the applicant stated in her submission that, as provided under section 41 (2) of the Land Disputes Courts Act, an appeal against the decision made by the tribunal is required to be lodged in the court within 45 days after the date of the impugned decision or order. She argued that, it is also stated in the proviso to the referred provision of the law that, the court may for good cause extend time for filing appeal in the court either before or after expiration of such period of forty five days.

In establishing there is a good cause for allowing the applicant to lodge appeal in the court out of time the counsel for the applicant argued that, the applicant delayed to lodge appeal in the court within the time prescribed by the law as he was seeking for legal aid. She stated that, the applicant delayed for about twenty days which includes the days used for preparation of the application and process of lodging the application in the court. She referred the court to the case of **Vodacom Tanzania Public Limited V. Commissioner General Tanzania Revenue Authority**, Civil Application No. 101/20 of 2021 CAT at Dodoma (unreported) where leave to appeal out of time was granted after the

court found the applicant had managed to account for the period of the delay and the respondent would have not been prejudiced if leave would have been granted.

She argued that, there are several judicial pronouncements stating for an application of extension time to be granted there must be sufficient cause. She referred the court to the case of **Blue Line Enterprises Ltd V. East African Development Bank**, Misc. Application No. 135 of 1995 (unreported) and **Fortunatus Masha V. Williamu Shija and Another** [1997] TLR 154 where the above stated position of the law was stated.

She argued that, although it is stated there must be sufficient cause for granting extension of time but there is no rule of thumb as to what is sufficient cause. She submitted that, as stated in the case of **Felix Tumbo Kisima V. TTCL Limited & Another**, [1997] TLR 57, sufficient cause required to be established depends on particulars of each case. She stated further that, as deposed at paragraphs 5, 6 and 7 the affidavit supporting the application, the applicant has managed to demonstrate good cause for his inability to appeal within the time prescribed by the law as he has stated he was looking for assistance of preparing his appeal from Tanganyika Law Society.

She submitted further that, the reason advanced by the applicant for his delay to appeal within time, constitute sufficient reason for granting

him extension of time and supported her submission with the cases of **Patrobet Ishengoma V. Kahama Mining Corporation Ltd & 2 Others** Civil Application No.2/2013 (unreported) and **Principal Secretary Ministry of defence and National Service V. Devram Valambia** 1992 TLR 182 where the court stated that, a claim of illegality in a challenged decision, constitute sufficient reason for granting extension of time regardless of whether or not a reasonable explanation has been given by the applicant for the delay.

She went on submitting that, the applicant's delay to appeal within the time was beyond his control as submitted above and added that there are overwhelming chances of success in the intended appeal. She prayed the court to allow the application so as to protect the right of the applicant to be heard as enshrined under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time. She also prayed the court to adopt the affidavit of the applicant and based on her submission to allow the application for interest of justice.

The respondent stated in his reply that, the application of the applicant is based on mendacious, frivolous and vexatious because the applicant has failed to demonstrate good cause for being granted extension of time to appeal out of time. He stated the applicant delayed for almost sixteen days to file application for extension of time in the

court. He stated the applicant lost interest to file the application in the court as even if the days are counted from the date when he received the impugned judgment and decree from the tribunal still the applicant delayed for six days. He submitted that the applicant has not accounted for each of the sixteen days of the delay as required by the law.

To support his argument the respondent cited the case of **Wambele Mtumwa Shahame V. Mohamed Hamis**, Civil Reference No. 8 of 2016 where the Court of Appeal cited the case of **Bushfire Hassani V. Latina Lucia Masanya**, Civil Application No. 3 of 2007, Court of Appeal of Tanzania (unreported) where it was held that, delay of even a single day has to be accounted for otherwise there will be no point of having rules prescribing period within which certain steps have to be taken. He argued that, the applicant has deposed at paragraphs 6 and 7 of his affidavit that he visited the office of Tanganyika Law Society on 6<sup>th</sup> day of August, 2021 and promised he would have been called. He said on 11<sup>th</sup> August, 2021 the applicant was assigned the advocate who is representing him in the matter when it was within the time to file the appeal in the court.

He submitted that the applicant's submission is silence on the reasons as to why the application was filed in the court on 1<sup>st</sup> September, 2021 while he received legal aid from Tanganyika Law Society from 16<sup>th</sup>

August, 2021. He submitted further that the applicant has failed to account for every single day of the delay as required by the law. He cited in his submission the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No.2 of 2010, where it was stated grant of extension of time is on the discretion of the court to grant it but that discretion is judicial and so it must be exercised according to the rules of justice and not according to private whim or arbitrary. He also listed some guidelines required to be considered in the application for extension of time.

The respondent cited in his submission section 20 (1) and (2) of the Land Disputes Courts Act and the case of **Said Seleman Ramadhani V. Sunday Ally Mwiga & Another**, Civil Appeal No. 157 of 2010 where section 14 (1) of the Law of Limitation Act were traversed by the court. To the view of this court the cited provisions of the law are not applicable in the application at hand as the application before the court is governed by section 41 (2) of the Land Disputes Courts Act and not the cited provision of the law.

The respondent argued that the applicant filed this application in the court without providing sufficient reason as to why he failed to file the appeal in the court while he had enough time to do so. He submitted that,

the reason that he was seeking for legal assistance from Tanganyika Law Society is not a defence to file appeal out of time. He submitted that proves the applicant disregarded the court procedure.

Finally, the respondent submitting that, it is a trite law that sufficient reason for extension of time must be demonstrated as stated by the Court of Appeal in the case of **John Moses and 3 Others V. R**, Criminal Appeal No.145 of 2006 (unreported) where Mandia, J followed the decision made in the case of **Elias Msonde V. R**, Criminal Appeal No 93 of 2005 (unreported) where it was held that, in application for extension of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his party. In fine the respondent prayed the application be dismissed for want of merit.

In her rejoinder the counsel for the applicant reiterated her submission in chief and added that, the respondent submission that the applicant failed to adduce sufficient cause for delay, this is just an allegation as the applicant succussed to state why there is a delay in lodging his appeal in the court within the time. She referred the court to section 95 of the Civil Procedure code Cap 33 R.E 2019 which gives the

court inherent power to make any order as may be necessary for the end of justice or to prevent abuse of the court process.

She also cited in her rejoinder the case of **Mobrama Gold Corporation Ltd V. Minister for Energy and Minerals and Others**, [1998] TLR 45 where it was held that, it is generally inappropriate to deny a party an extension of time in instances where the applicant's delay does not constitute a case of procedural abuse or contemptuous default and where the respondent will not suffer and be prejudice if the extension of time should be granted. She submitted that, at all the time the applicant was diligently making follow up to this case as it has been stated in the affidavit and submission in chief which has always been a good ground for the court to show mercy to the application for extension of time.

She referred the court to the case of **Elibariki Asseri Nnko V. Shifaya Mushi and Another**, [1998] TLR 81 where it was stated that, as the applicant had all the time been acting with diligence there was good and sufficient cause for granting him extension of time. She furthermore referred the court to the case of **Samson Kishosha Gabba V. Charles Kingongo Gabba**, [1990] TLR 133 where it was stated that, in determine whether to grant extension of time or not the court is required to consider the reason for the delay and likelihood of success.



He submitted that, the applicant's intended appeal stand overwhelming chance of success as the applicant is still the registered owner of the suit premises while the respondent has been occupying the suit premises forcefully and illegally through sheer fraud and collusion. She cited in her submission the case of **Castellow V. Somerset County Council**, [1993] 1 All E.R, 952 cited in the case of **Elibariki Asseri Nnko** (supra) where it was stated that, plaintiff should not in ordinary way be denied right of adjudicating his claim on its merit because of procedural default unless the default causes prejudice to his opponent. At the end she stated the applicant has managed to account for each day of the delay and prayed the court the application.

After painstakingly considered the rival submission from both sides the court has found the issue to determine in this application is whether the applicant has managed to demonstrate good cause for being granted extension of time to lodge his appeal in the court out of time. The question to determine here is what is good cause which the applicant is required to show to move the court to exercise its discretionary power to grant extension of time sought in any application. The court has found the term good cause has been defined in various judicial pronouncements which some of them are the cases of **Bertha V. Alex Maganga**, Civil Reference No. 7 of 2016 (unreported) and **Jacob Shija V. M/S Regent Food &**

**Drinks Limited & Another** Civil Application No. 440/08 of 2017, CAT At Mwanza (unreported) where it was stated in the latter case that: -

*"What amount to good cause cannot be laid by any hard and fast rule but is dependent upon the facts obtained in each particular case. That is each case will be decided on its own merits of course taking into consideration the question, inter alia, whether the application for extension of time has been brought promptly, whether every day of delay has been accounted for, the reason for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant".*

The court has found the reason for the applicant in the present application to delay to lodge appeal in the court within the time prescribed by the law is that, after the applicant being availed with the copies of the Judgment and Decree of the tribunal, he started a process of finding legal aid. It is deposed in the affidavit of the applicant that, the impugned judgment of the tribunal was delivered on 1<sup>st</sup> July, 2021. The applicant deposed at paragraphs three and four of his affidavit that, after the judgment been delivered, on 6<sup>th</sup> July, 2021 he applied for the copy of judgment and decree from the tribunal and the same were supplied to him on 28<sup>th</sup> July, 2021.

It is deposed further at paragraph 6 of the affidavit of the applicant that, after the applicant being supplied with copies of the judgment and

decree, he went to Tanganyika Law Society on 6<sup>th</sup> August, 2021 to seek for legal aid and he was promised to be given a lawyer. It is deposed at paragraph seven of the affidavit of the applicant that, on 11<sup>th</sup> August 2021 the applicant was informed by TLS that his matter had been assigned to advocate Salha Ramadhani Hamisi who is representing him in the present application. It is deposed further in the same paragraph that, the applicant and the advocate assigned to him arranged to meet on 16<sup>th</sup> August 2021 for further discussion. After discussion the present application was prepared and filed in the court 1<sup>st</sup> September, 2021.

That being the position of the matter the court has found it is well provided under section 41 (2) of the Land Disputes Courts Act that a party wishing to appeal against decision or order of District Land and housing tribunals made in its original jurisdiction is required to lodge his or her appeal in the court within forty five days after the impugned decision or order. The court has found the current position of the law is now well settled that, when a party has been delayed to get copy of the impugned decision or order the limitation of time is required to start to count from when he or she was supplied with the copy of the impugned decision and not from when the impugned decision or order was pronounced.

The court has found it is not disputed in the present application that the applicant was supplied with the copy of the judgment and decree of

the tribunal on 28<sup>th</sup> July, 2021 and the present application was lodged in the court on 1<sup>st</sup> September, 2021. That shows from when the applicant was supplied with the copies of judgment and decree until when the application at hand was filed in the court it is about 44 days which had passed which is within 45 days from when the copies of the judgment and decree were supplied to the applicant.

After finding the application was filed in the court within forty five days from when the applicant was supplied with the copy of the impugned judgment and decree and after seeing the applicant has stated from when he was issued with the copies of the judgment and decree he was looking for legal aid the court has found the applicant has not delayed to file the present application in the court as argued by the respondent. To the contrary the court has found the applicant did not delay to file the present application in the court and he has fulfilled all the factors enunciated in the case of **Lyamuya Construction Company Limited** (supra) where it was stated that: -

- (a) *"The applicant must account for all the period of delay.*
- (b) *The delay should not be inordinate.*
- (c) *The applicant must show diligence, and not apathy, negligence, or sloppiness in the prosecution of the action he intends to take."*

The court has also found that, as it has not been stated to the court how the respondent will be prejudiced if the applicant will be granted extension of time, then the court has found as stated in the case of **Elibariki Asseri Nnko** (supra) there is no justifiable reason for denying the applicant extension of time is seeking from this court. In the light of all what I have stated hereinabove the court has found the applicant has managed to establish he was delayed by good cause to lodge his appeal in the court within the time prescribed by the law. Consequently, the application is granted and the applicant is given 21 days from the date of delivery of this ruling to lodge his appeal in the court. Each party to bear his own costs. It is so ordered.

Dated at Dar es Salaam this 17<sup>th</sup> day of June, 2022.



I. Arufani, J

**JUDGE**

17/06/2022.

**Court:**

Ruling delivered today 17<sup>th</sup> day of June, 2022 in the presence of the Ms. Salha Hamisi, Advocate for the applicant and in the presence of the respondent in person. Right of appeal to the Court of Appeal is fully explained.



I. Arufani, J

**JUDGE**

17/06/2022.