

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO.299 OF 2022**

ALLY ABDALLA SULE APPLICANT

VERSUS

MARIAM HAMIS HUSSEIN RESPONDENT

RULING

Date of last Order: 15.07.2022

Date of Ruling: 15.07.2022

A.Z.MGEYEKWA, J

This ruling is in respect of an application for an extension of time to lodge an appeal out of time against the decision of the District Land and Housing Tribunal. The application, preferred under the provisions of section 38 (1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]]. The affidavit is supported by an affidavit deposed by Ally Abdallah Sule, the applicant. The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application for extension of time by

filing a counter-affidavit deposed by Mariam Hamisi Hussein, the respondent. They opposed the application on the ground that the applicant has not laid a basis for grant of the extension of time.

When the matter was called for hearing on 27th June, 2022, the applicant enlisted the legal service of Mr. Bitaho B. Marco, learned counsel and the respondent appeared in person, unrepresented. The Court acceded to the respondent's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

In his submission, in support of the application, Mr. Bitaho submitted that the applicant is seeking for extension of time to file an appeal out of time against the decision of the District Land and Housing Tribunal for Ilala in Land Appeal No. 16 of 2021. Mr. Bitaho submitted that for the interest of justice this court be pleased to extend the time to appeal out of time. He stated that the applicant in his affidavit in support of this application discloses the good reason for the order of extension of time to appeal out of time. He urged the applicant's affidavit to be an integral part of his submission.

Mr. Bitaho stated that the applicant on 1st March, 2021 successfully filed an appeal against the decision of Minazi Tribunal in Land Dispute No. 39 of

2020 and the applicant submitted his submission in chief within time but the applicant was not served with a copy of the respondent's reply hence failed to prepare his rejoinder and the tribunal proceeded with the matter and delivered the decision in favour of the respondent.

The learned counsel for the applicant continued to submit that immediately after the delivery of the judgment he applied for the perusal of the file and after realizing that there were some errors done by the tribunal, he started the process of filing the appeal. He added that unfortunately, the applicant had family problems which led him to undergo financial crises thus he failed to hire a lawyer to represent him and had no money to cover the costs of drafting his application and no filing fee. He submitted that he tried to seek legal aid representation but his efforts were futile. Mr. Bataho submitted that there are likelihood of success and the same is good ground for extension of time. Supporting his submission he cited the case of **Samson Kishosha Gabba v Charles Kinongo Gabba** [1990] TLR 133 HC. He added that there are overwhelming chances for the applicant to succeed in his intended appeal if the prayer for extension is granted since the impugned decision is tainted with illegalities and irregularities. To buttress his contentions he cited

the case of **Samson Kishosha Gabba** (supra) and **Elibariki Asseri Nnko v Shifata Mushi & Lewanga Kinando** [1998] TLR 81.

Mr. Bitaho did not end there, he urged this court to grant the applicant's application for the interest of justice so that the applicant can enjoy his constitutional right to be heard. To support his submission he referred this court to Articles 13 (6) (e) and 107A (2) (e) of the Constitution of the United Republic of Tanzania Cap.2 [R.E 2019]. He added that the court in the case of **Abdallah Mponzi v Daudi Miwilo** (2000) TLR 328 cemented the need to adhere to the principle of natural justice.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant's application for an extension of time to file an appeal to this court against with costs.

In reply, the learned counsel for the respondent urged this court to adopt his counter-affidavit and form part of his submission. The learned counsel for the respondent submitted that as per section 38 91) of the Land Disputes Courts Act, Cap. 216 this court has power to extent time to file an appeal. She contended that the applicant is put to task to prove before this court that there is a valid reason for his delay in filing an appeal within time. Ms. Sandewa submitted that the applicant claimed that the respondent never

served him with a reply, in her view this matter was supposed to be raised at the tribunal. The learned counsel went on to submit that the applicant had sixty days to file an appeal, the reason that he requested for file perusal is not relevant in the matter at hand. She added that the applicant wasted his time following a process that would have not been helping his case rather he would have just filed an appeal on time, hence the applicant has no ground and valid reason for such delay.

The learned counsel for the respondent contended that the applicant's submission that he has a high chance of success on appeal then could have not wasted time in perusing the file since he has already judged that he will succeed.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the application.

In conclusion, the learned counsel for the applicant urged this court to grant the applicant application with costs.

Having carefully considered the submissions made by the learned counsels in their oral submission and examined the affidavit and counter-

affidavit, the issue for our determination is *whether the application is meritorious*.

The position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term “good cause” having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

I have keenly followed the application and the grounds deposed in the supporting applicant's affidavit and the respondent's counter-affidavit, I have

shown the path navigated by the applicant and the backing he has encountered in trying to reverse the decision of this court. In his submission, the applicant's Advocate relied on the grounds of accounting for days of delay and illegality.

In the first limb of extension of time, the applicant in paragraphs 7, 8, 9, 10, 11, and 12 tried to narrate and justify his delay, however, the applicant has failed to account for the each days of delay. He did not show when exactly he had family problems. Again, the applicant has not specify the days when he was not able to pay the costs of hiring a lawyer. Therefore, it is vivid that the applicant' narration was mere words. It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Also, the law requires for a party who seeks an extension of time to account for each day of delay and failure to do so the Court cannot exercise its discretion in his favour.

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 Millss**

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 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.”

Applying the above holding of the Court of Appeal of Tanzania in the matter at hand, it is clear that the applicant has failed to account for every day of delayed.

Regarding the second limb of application, the learned counsel for the applicant in trying to reverse the decision of the District Land and Housing Tribunal submitted that there is overwhelming chances for the applicant to succeed in his intended appeal, there is likelihood of success and he insisted that the impugned decision was tainted with illegalities and irregularities. In his view the said reasons are good ground for extension of time.

I had to go through the applicant's affidavit to find out whether the applicant included the issue of illegality in his affidavit and found that the applicant in

his affidavit did not raise the issues of likelihood of success, overwhelming chances of success, the issue of illegalities and irregularities. Instead, it was raised by the learned counsel for the applicant in his submission.

It is settled law that submissions made from the bar or through written submissions cannot constitute the basis for the grant of an application, unless the contention in question is averred in the supporting affidavit. This position stems from the fact that, an affidavit is evidence, unlike submissions which are generally meant to reflect the general features of a party's case, and are elaborations or explanations on evidence already tendered. This was observed by the Court of Appeal of Tanzania in the case of **The Registered Trustees of Archdiocese of Dar es Salaam v Chairman Bunju Village Government and Others**, Civil Application No. 147 of 2006 (unreported).

Thus, while the contention raised by Mr. Bitaho is in sync with the foregoing position, I am convinced that the above grounds including the ground of illegality have been raised through a submission from the bar. The alleged illegality is not specifically pleaded in the applicant's supporting affidavit, and what Mr. Bitaho did, through his submission, was to introduce a new ground of illegality. By doing so he banked on the ground which was

not stated by the applicant in his affidavit. Therefore, I regard that the applicant's counsel submission was an afterthought. The same cannot, as a matter of law, be termed as illegality thus cannot be a ground for applying for extension of time.

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 Ms. Sandewai's views that the applicant's application is devoid of merit.

The upshot of the above is that I am inclined to disallow the application for extension of time. The application is dismissed without costs.

Order accordingly.

Dated at Dar es Salaam this date 15th July, 2022.




A. MGEYEKWA
JUDGE
15.07.2022



Ruling delivered on 15th July, 2022 via video conferencing, whereas both learned counsels were remotely present.



A.Z. MGEYEKWA

JUDGE

15.07.2022