

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 18 OF 2022

(Arising from Land Appeal No. 38 of 2020 before the District Land and Housing Tribunal for Kibaha dated 17th May 2021 Hon. Lung'wecha- Chairperson)

HAMISI DIGOGOLO.....APPLICANT

VERSUS

SALAMA RAJABU.....RESPONDENT

30/6/2022 & 27/7/2022

RULING

A.MSAFIRI, J.

On the 18th day of January 2022, the applicant lodged an application in this Court by way of chamber summons under proviso to Section 38(1) of the Land Disputes Courts Act [CAP 216 R.E 2019] and Section 14 (1) of the Law of Limitations Act [CAP 89 R.E 2019] for the following orders;

- i. *That this Honourable Court may be pleased to extend the period of time for the applicant to file appeal out of time.*
- ii. *That the costs of this application be provided for.*
- iii. *Any other and further relief the Tribunal [sic] [court] may deem fit and just to order.*

Alls

The application was taken at the instance of the applicant and it is supported by an affidavit affirmed by the applicant himself.

It is gathered from the record that parties to the present application had a land dispute hence they referred the said dispute before Msimbu Ward Tribunal (the trial Tribunal) which decided in favour of the respondent. The applicant was aggrieved with the said decision of the trial Tribunal hence he preferred Appeal No. 38 before the District Land and Housing Tribunal for Kibaha at Kibaha (the DLHT).

The DLHT upheld the decision of the trial Tribunal hence the applicant's appeal was dismissed for lack of merits. The applicant was further aggrieved with the decision of the DLHT hence he intends to challenge it before this Court. But being unable to lodge the appeal in time he has preferred the present application for extension of time.

When this application was called on for hearing on 30th June 2022, Mr. Karoli Fabian learned advocate appeared for the applicant whereas the respondent appeared in person, she had no legal representation. The application was disposed of orally.

Mr. Karoli having adopted the affidavit in support of the application contended that the applicant was not aware of the date of delivery of the *Atte.*

judgment. He became aware of it when time had already lapsed. It was Mr. Karoli's argument that before the DLHT the appeal was argued by written submissions but the judgment was not delivered promptly. By the time the judgment was delivered the applicant was absent and was never notified on the date when judgment was delivered.

On further submission, Mr. Karoli said that the applicant became aware of the existence of the judgment when he was served with the summons for execution of the decree which was issued to him on 30/12/2021. The learned advocate stated that the applicant has advanced sufficient reasons for the delay. To fortify his point he has cited the case of **Fortunatus Masha v William Shija & others** [1997] TLR 153.

On reply the respondent having adopted her counter affidavit to form part of her submission, she contended that judgment of the DLHT was delivered on 17/5/2021 and because it was the applicant who instituted the appeal he had an obligation to attend to the court to know the status of his case.

The respondent contended further that it is not true that the judgment was late, it was delivered in time hence she prayed the application to be dismissed. *Acte*

On rejoinder Mr. Karoli learned advocate essentially reiterated his submission in chief and prayers.

Having gone through the submissions of the parties, rival and in support of the present application the sole issue which calls for the Court's determination is whether the application has merit.

For application of extension of time like the present one, the applicant must show good cause before the Court can exercise its powers for extension of time, (see the cases of **Abdallah Salanga & 63 Others v. Tanzania Harbours Authority**, Civil Reference No. 08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application no. 4 of 2014 (both unreported).

I have gone through the affidavit in support of the application and found that no reason(s) for the delay has/have been advanced by the applicant. The contention by the applicant that he was not notified on the date the judgment of the DLHT was to be delivered featured for the first time during the submission by the learned advocate for the applicant. These facts have not been stated in the affidavit which was drawn and filed by Mr. Karoli learned advocate. *Aelle*

Hence as the facts have been brought up in the course of submission and not in the affidavit, those statements remain mere and unproven assertions because no evidence has been given by affidavit to prove the allegations in the statement.

In the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006 (supra), the Court of Appeal held:

" . . Submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence.

On paragraph 5 of the affidavit the applicant states that he wrote a letter requesting for the copy of judgment which was supplied to the applicant on 5th January 2022 but it has not been stated when the applicant requested for the said copy and also the said letter has not been attached. It was necessary for the applicant to state as to when he requested for the said judgment by showing a letter to the effect as it is important to gauge whether the applicant acted promptly. *Allb.*

The sole reason advanced for his failure to lodge the appeal in time was because of not being aware of the date of delivery of judgment by the DLHT. He was aware of the same after being issued with summons for execution purposes. Although as I have stated earlier, this argument featured during the submission by the learned advocate for the applicant I will determine it to see whether it has merits. This is because the respondent had a chance to make a reply hence she was not prejudiced.

It is true as submitted by the applicant that he was not present on the date the judgment of the DLHT was delivered. This is because page 6 of the typed judgment of the DLHT indicates that the judgment was delivered in the presence of the respondent on 17/5/2021.

It is further revealed that the copy of the judgment was certified on 22/6/2021 which signifies that the judgment was ready for collection on 22/6/2021. Now the contention by the applicant that the judgment was not delivered in time is not supported by any proof. As rightly submitted by the respondent, because it is the applicant who lodged an appeal before the DLHT he was required to make follow up of his case from the date he lodged the same to its finality. The argument by the applicant that he was aware of the judgment on 30/12/2021 shows a great degree of laxity on

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his part because judgment was delivered on 17/5/2021 that means from the date the judgment was delivered though in his absence he never bothered to make a follow up of his case until 30/12/2021 when he was served with summons for execution. This indicates that the applicant would have not known anything on a matter he instituted if he would have not been issued with the said summons of execution.

The applicant's argument would have been of substance if for instance they were told by the DLHT that judgment would be delivered on notice or the matter proceeded ex-parte against him which both cases are not applicable here.

Again the applicant has contended that he was aware of the existence of the judgment on 30/12/2021. The present application was lodged on 18/1/2022 which is a period of over **18 days**. It is settled law that in an application for extension of time to do an act, the applicant is supposed to account for each day of delay. See for instance **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 and **Mpoki Lutengano Mwakabuta v. Jane Jonathan** (*As Legal Representative of the Late Simon Mperasoka- Deceased*), Civil *App.*

Application No. 566/01 of 2018 (both unreported). For instance, in the former case the Court stated thus:

"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"

So even if I were to agree with the applicant that he was not aware of the judgment until 30/12/2021, he has not accounted for each day lapsed since he became aware of the said judgment to the date he lodged the present application.

In upshot and for the foregoing reasons, I hold that the application lacks merits and it is hereby dismissed in its entirety with costs.




A. MSAFIRI,
JUDGE
27/7/2022