

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPLICATION No. 456 OF 2022

(Arising from the decision of District Land and Housing Tribunal for Temeke in Land Appeal No. 52/2020, delivered on the 27th May, 2020 and Originating from Land Application No. 60 of 2020 from Kisarawe II Ward Tribunal dated 15th October, 2020)

AMINI MAPUNDA.....APPLICANT

VERSUS

FILOTEUS ALOYCE MSIGWA.....RESPONDENT

RULING

16/5/2022 & 20/7/2022

Masoud, J.

Before me is an application for extension of time within which the Applicant can file an appeal out of time against the decision of the District Land and Housing Tribunal for Temeke (**DLHT**) in Land Appeal No.52 of 2020, delivered on the 27th May, 2021. The Application is made under the provision of Section 14 (1) of the Law of Limitation Act, Cap 89 R.E 2019, and is supported by the Applicant's affidavit, dated 30th August, 2021. Opposing the Application, the Respondent filed his counter affidavit dated 12th October, 2021, accompanied with the preliminary objection to the

effect that the affidavit is incurably defective for containing opinion and conclusion.

Upon being served with the counter affidavit, the Applicant also on the 25th October, 2021 filed his reply to the counter affidavit accompanied with what he styled as preliminary points of objection that the respondent's Counter Affidavit has been filed out of time, and that the respondent's Counter Affidavit is defective as it has been wrongly dated and verified. As I am mindful of rules of practice pertaining to raising preliminary objection, I will treat the applicant's objections as part of her submissions in support of the application and against the respondent.

On the 22nd March, 2022 the court ordered the hearing of the Application and the preliminary objections to proceed concurrently by way of filing written submissions. Both parties adhered to the submission schedule. During the hearing of this application both parties were represented. While the Applicant was represented by Mr. Andrew Miraa, Advocate, the Respondent was represented by Mr Benitho Mandele, and Ms. Joha K. Mapondela, Advocates.

Submitting on the preliminary objections raised by the respondent, Mr. Mandele told this court that the Applicant's application contravened the rules governing affidavit. He was of the view that the affidavit contains legal conclusion, opinion and prayers. It was therefore, argued that the defective paragraphs render the entire affidavit incurably bad in law. He referred this court to the contents of paragraphs 8 and 9 of the of the impugned affidavit. The paragraphs read as follows:

Paragraph 8; *"...the decision the subject of this application contain serious issues of law and illegality to warrant investigation by the appellate court..."*

Paragraph 9; *"... the applicant stands to suffer injustice and irreparable loss the respondent in event the orders sought are not granted..."*

To support his arguments, he cited the provision of Order XIX Rule 3(1) of the Civil Procedure Code, Cape 33 R.E 2019 (**The C.P.C**). He also, referred me to **Uganda vs Commissioner of Prisons Ex-parte Matovu** (1966) E.A 520, and **The Dar es Salaam Water Sewerage Corporation vs Rombo Green view Limited**, Civil Application No.183 of 2006 (unreported).

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The document also highlights the need for transparency and accountability in all financial dealings.

In addition, the document outlines the various methods used to collect and analyze financial data. It describes the role of different departments in the process and the importance of using reliable data sources. The document also discusses the challenges of data collection and analysis and provides suggestions for overcoming these challenges.

The document also addresses the issue of data security and the need to protect sensitive financial information. It discusses the various risks associated with data security and provides strategies for minimizing these risks. The document also discusses the importance of regular security audits and the need to stay up-to-date on the latest security threats.

Mr. Miraa for the Applicant impliedly conceded to the respondent's preliminary objection and added that according to the provision of O. XIX R.3 (1) of the C.P.C (supra) his application falls within the exception provided under the cited provision, as it is an *interlocutory application*. To support his argument, he cited the case of **Israel Solomon Kivuyo vs Wayani Langoi and Naishooki Wayani [1989] T.L.R 140.**

In his rejoinder, Counsel for the respondent reiterated what he submitted in his submission in chief, and added that, the applicant's application is not an interlocutory application which falls within the ambit of the proviso of O.XIX R.3 (1).

After examining the impugned paragraphs, namely, paragraph 8 and 9 of the affidavit in light of the rival submissions on whether or not the counter affidavit is incurably defective for containing opinion and conclusion, I found them to be defective for being argumentative and containing legal conclusion. It is trite law that an affidavit which is to be used as evidence before the court should not contain extraneous matters but facts only. I am in this respect guided by the case of **Uganda v. Commissioner of Prison Exparte Matovu** (supra) where it was held that:

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"As a general rule of practice and procedure on affidavit for use in Court being a substitute for oral evidence, it should only contain statement to which the witness disposes either of his own knowledge or such an affidavit should, not contain extraneous matters by way of objection or prayer or legal argument or conclusion."

Paragraph 9 attracts arguments as to whether or not the Applicant stands to suffer injustices and irreparable loss in the event the order sought is not granted. Further to that the content of paragraph 8 that, *"...the decision the subject of this application contain serious issues of law and illegality to warrant investigation by the appellate court..."* is indeed a conclusion.

However, it is now settled law that an offensive paragraph can be expunged and the court continue to determine the application based on the remaining paragraphs if the expunged paragraph is inconsequential.

The case of **Jamal S. Mkumba and Another Vs Attorney General in Civil Application No. 240/01 of 2019** is instructive in this regard.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author details the various methods used to collect and analyze the data. This includes both manual and automated processes. The goal is to ensure that the data is as accurate and reliable as possible.

The third part of the document focuses on the results of the analysis. It shows that there is a clear trend in the data, which is consistent with the initial hypothesis. This finding is significant and warrants further investigation.

Finally, the document concludes with a summary of the findings and a list of recommendations. It suggests that the current methods are effective but could be improved in certain areas. The author also notes that the data is still being analyzed and that more results will be shared in the future.

Consequently, paragraphs 8 and 9 of the applicant's affidavit are expunged from record of this application. With this outcome, the court will proceed to consider and determine the main Application whilst having regard to the preliminary arguments raised by the applicant against the respondent's counter affidavit as already pointed out.

Mr. Miraa submitted that the counter affidavit was filed out of time. The application was filed on 3/09/2021 and it was immediately served to the respondent. The respondent was supposed to file his reply within 14 days from the date of service, but he filed his counter affidavit together with his notice of preliminary objection on 12/10/2021, after the lapse of 14 days. Consequently, the applicant invited the court to strike out the counter affidavit and allow the application.

Mr. Miraa also submitted that, the counter affidavit of the respondent is improperly verified. In this respect, the learned counsel had it that the verification clause does not bear the name of the deponent. Therefore, the counter affidavit should for such reason be struck out with costs.

Reliance was thus made to the case of **DPP vs. Dodoli Kapufi and Another**, Criminal Application No. 11 of 2008 (C.A)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. It is essential to ensure that all entries are supported by appropriate documentation.

3. Regular audits should be conducted to verify the accuracy of the records.

4. The second part of the document outlines the procedures for handling discrepancies.

5. Any errors identified during the audit process should be promptly investigated.

6. The findings of the audit should be reported to the appropriate authorities.

7. It is also important to maintain a clear and organized filing system for all records.

8. The final part of the document provides a summary of the key points discussed.

9. This document is intended to serve as a guide for all personnel involved in the process.

10. Please refer to the attached schedule for further details regarding the audit process.

11. The audit will be conducted over a period of three weeks, starting from the date of this document.

12. All personnel are expected to cooperate fully with the audit team.

13. Any questions or concerns should be directed to the audit manager.

14. The audit will be completed by the end of the month.

15. The final report will be submitted to the board of directors.

16. It is the responsibility of all personnel to ensure the integrity of the financial records.

17. The audit process is a critical component of our internal control system.

18. We are committed to transparency and accountability in all our financial operations.

19. Thank you for your attention and cooperation.

20. The audit manager will be in contact with you regarding the next steps.

In his reply, the counsel for the respondent submitted that he was served with the application on the 30th September, 2021 and managed to file his counter affidavit within time on the 12th October, 2021. On the other point, the respondent submitted that the counter affidavit has been sworn by the respondent and it met all requirement provided by the law under the provision of O. XIX R. 3(1) and O. VI R.15(2) and (3) of the C.P.C. In his rejoinder, Mr. Miraa reiterated what he submitted in his submission in chief and added that on the 28/9/2021 the applicant managed to serve the respondent with the application.

My perusal of the record revealed that the application was filed on the 3/9/2021, and the counter affidavit was filed on 12/10/2021. Ms. Mapondela, thus, insisted that the respondent filed his counter affidavit on time, 13 days after being served with the application on the 30/9/2021.

My further perusal of the record revealed that apart from mere words by Mr. Miraa in his rejoinder, there is nothing on the record to prove that the application was served to the Respondent on 28/9/2021.

One would have expected Mr. Miraa to produce evidence of service signed by the respondent to show that he undeniably received the said application on the 28/9/2021. In the absence of such proof, I am therefore

persuaded that, the applicant did not serve his application to the respondent on the 28/9/2021. Thus, the argument that the counter affidavit was filed out of time is bound to fall as it is inconsistent with the record.

As to the other argument, I am satisfied that it lacks substance as the counter affidavit is properly verified and signed by the respondent. The case of **DPP vs. Dodoli Kapufi and Another (supra)** cited by Mr. Miraa is distinguishable. In the cited case, the applicant did not sign the verification clause of his affidavit, and the defects rendered the applicant's affidavit incurably defective. In the case at hand, the verification clause of the respondent's counter affidavit is signed. This argument is equally bound to fall for reasons already stated.

In so far as the reasons supporting the application are concerned, Mr. Miraa submitted that the Applicant's delay to file the intended appeal within time was due to the delay by the District Land and Housing Tribunal to avail copies of the impugned judgment and decree to the applicant. In his reply, Ms. Mpondela had it in a nutshell that the applicant failed to account for each day of delay.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in financial matters. This section also touches upon the legal implications of failing to maintain such records.

2. The second part of the document outlines the specific procedures and protocols that must be followed when conducting business transactions. It details the steps for invoicing, payment processing, and reporting. This section is crucial for ensuring that all parties involved in the transaction are kept informed and that the process is carried out smoothly and efficiently.

3. The third part of the document addresses the issue of data security and privacy. It discusses the various risks associated with data breaches and provides guidelines for implementing robust security measures. This section is particularly relevant in today's digital age, where sensitive information is often stored and transmitted electronically.

4. The fourth part of the document focuses on the importance of regular audits and reviews. It explains how these processes can help identify potential issues, errors, or areas for improvement. This section also discusses the role of external auditors and the benefits of having a third party review the organization's records and operations.

5. The final part of the document provides a summary of the key points discussed and offers some concluding thoughts on the overall importance of maintaining accurate records and following proper procedures. It encourages all stakeholders to take responsibility for their actions and to work together to ensure the highest standards of transparency and accountability.

My duty here is mainly to see whether the applicant has established sufficient or good cause warranting this court to exercise its discretion to grant extension of time within which to file an appeal out of time.

It was Mr. Miraa's contention that an appeal to the High Court against the decision of the District Land and Housing Tribunal (DLHT) is supposed to be filed within 45 days from the date of the decision. The judgment intended to be appealed against was delivered on the 27/05/2021, and the Applicant on 15/06/2021 applied to be supplied with relevant copies.

When the applicant was supplied with the said copies of the judgment and decree on 15/07/2021, the time to appeal had already lapsed. To be precise 49 days had already expired. Mr. Miraa's line of argument was strongly resisted by Ms. Mapondela and I am in agreement with Ms. Mapondela that, appeals to the High Court, from the DLHT exercising its appellate jurisdiction is covered under the provision of Section 38(1), (2) and (3) of the Land Disputes Courts Act Cap 216 R.E 2019, (herein after the Act)

According to the above cited provision, the aggrieved party is supposed to file his appeal within 60 days from the date of the decision and the said

1. 在 \$x=0\$ 处，函数 \$f(x)\$ 的导数 \$f'(0)\$ 存在，且 \$f'(0) = 1\$。
 2. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二阶导数 \$f''(0)\$ 存在，且 \$f''(0) = 2\$。
 3. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三阶导数 \$f'''(0)\$ 存在，且 \$f'''(0) = 6\$。
 4. 在 \$x=0\$ 处，函数 \$f(x)\$ 的四阶导数 \$f^{(4)}(0)\$ 存在，且 \$f^{(4)}(0) = 24\$。
 5. 在 \$x=0\$ 处，函数 \$f(x)\$ 的五阶导数 \$f^{(5)}(0)\$ 存在，且 \$f^{(5)}(0) = 120\$。
 6. 在 \$x=0\$ 处，函数 \$f(x)\$ 的六阶导数 \$f^{(6)}(0)\$ 存在，且 \$f^{(6)}(0) = 720\$。
 7. 在 \$x=0\$ 处，函数 \$f(x)\$ 的七阶导数 \$f^{(7)}(0)\$ 存在，且 \$f^{(7)}(0) = 5040\$。
 8. 在 \$x=0\$ 处，函数 \$f(x)\$ 的八阶导数 \$f^{(8)}(0)\$ 存在，且 \$f^{(8)}(0) = 40320\$。
 9. 在 \$x=0\$ 处，函数 \$f(x)\$ 的九阶导数 \$f^{(9)}(0)\$ 存在，且 \$f^{(9)}(0) = 362880\$。
 10. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十阶导数 \$f^{(10)}(0)\$ 存在，且 \$f^{(10)}(0) = 3628800\$。

11. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十一阶导数 \$f^{(11)}(0)\$ 存在，且 \$f^{(11)}(0) = 39916800\$。
 12. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十二阶导数 \$f^{(12)}(0)\$ 存在，且 \$f^{(12)}(0) = 479001600\$。
 13. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十三阶导数 \$f^{(13)}(0)\$ 存在，且 \$f^{(13)}(0) = 6227020800\$。
 14. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十四阶导数 \$f^{(14)}(0)\$ 存在，且 \$f^{(14)}(0) = 81289625600\$。
 15. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十五阶导数 \$f^{(15)}(0)\$ 存在，且 \$f^{(15)}(0) = 1124025600000\$。
 16. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十六阶导数 \$f^{(16)}(0)\$ 存在，且 \$f^{(16)}(0) = 16329600000000\$。
 17. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十七阶导数 \$f^{(17)}(0)\$ 存在，且 \$f^{(17)}(0) = 242496000000000\$。
 18. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十八阶导数 \$f^{(18)}(0)\$ 存在，且 \$f^{(18)}(0) = 3745440000000000\$。
 19. 在 \$x=0\$ 处，函数 \$f(x)\$ 的十九阶导数 \$f^{(19)}(0)\$ 存在，且 \$f^{(19)}(0) = 58182656000000000\$。
 20. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十阶导数 \$f^{(20)}(0)\$ 存在，且 \$f^{(20)}(0) = 883046400000000000\$。

21. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十一阶导数 \$f^{(21)}(0)\$ 存在，且 \$f^{(21)}(0) = 13652224000000000000\$。
 22. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十二阶导数 \$f^{(22)}(0)\$ 存在，且 \$f^{(22)}(0) = 219934464000000000000\$。
 23. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十三阶导数 \$f^{(23)}(0)\$ 存在，且 \$f^{(23)}(0) = 3458927360000000000000\$。
 24. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十四阶导数 \$f^{(24)}(0)\$ 存在，且 \$f^{(24)}(0) = 53283942400000000000000\$。
 25. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十五阶导数 \$f^{(25)}(0)\$ 存在，且 \$f^{(25)}(0) = 802304640000000000000000\$。
 26. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十六阶导数 \$f^{(26)}(0)\$ 存在，且 \$f^{(26)}(0) = 11993446400000000000000000\$。
 27. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十七阶导数 \$f^{(27)}(0)\$ 存在，且 \$f^{(27)}(0) = 181892736000000000000000000\$。
 28. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十八阶导数 \$f^{(28)}(0)\$ 存在，且 \$f^{(28)}(0) = 2728394240000000000000000000\$。
 29. 在 \$x=0\$ 处，函数 \$f(x)\$ 的二十九阶导数 \$f^{(29)}(0)\$ 存在，且 \$f^{(29)}(0) = 40230464000000000000000000000\$。
 30. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十阶导数 \$f^{(30)}(0)\$ 存在，且 \$f^{(30)}(0) = 599344640000000000000000000000\$。

31. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十一阶导数 \$f^{(31)}(0)\$ 存在，且 \$f^{(31)}(0) = 8852224000000000000000000000000\$。
 32. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十二阶导数 \$f^{(32)}(0)\$ 存在，且 \$f^{(32)}(0) = 132934464000000000000000000000000\$。
 33. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十三阶导数 \$f^{(33)}(0)\$ 存在，且 \$f^{(33)}(0) = 2008927360000000000000000000000000\$。
 34. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十四阶导数 \$f^{(34)}(0)\$ 存在，且 \$f^{(34)}(0) = 29983942400000000000000000000000000\$。
 35. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十五阶导数 \$f^{(35)}(0)\$ 存在，且 \$f^{(35)}(0) = 442304640000000000000000000000000000\$。
 36. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十六阶导数 \$f^{(36)}(0)\$ 存在，且 \$f^{(36)}(0) = 66934464000000000000000000000000000000\$。
 37. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十七阶导数 \$f^{(37)}(0)\$ 存在，且 \$f^{(37)}(0) = 1008927360000000000000000000000000000000\$。
 38. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十八阶导数 \$f^{(38)}(0)\$ 存在，且 \$f^{(38)}(0) = 15083942400000000000000000000000000000000\$。
 39. 在 \$x=0\$ 处，函数 \$f(x)\$ 的三十九阶导数 \$f^{(39)}(0)\$ 存在，且 \$f^{(39)}(0) = 222304640000000000000000000000000000000000\$。
 40. 在 \$x=0\$ 处，函数 \$f(x)\$ 的四十阶导数 \$f^{(40)}(0)\$ 存在，且 \$f^{(40)}(0) = 3329344640000000000000000000000000000000000\$。

appeal is to be filed in the DLHT. When filing an appeal under the above cited provision, there is no requirement to wait for the certified copies of the impugned judgment and decree.

In the Application at hand, Mr. Miraa's main reason was the alleged delay by the DLHT to supply the certified copies of the judgment and decree. Even if the applicant was to wait for the said copies, by the time he was supplied with the certified copies on the 15/07/2021, only 46 days had already passed.

Thus, the applicant was still within time to file his appeal. But he did not. Rather he waited until 03/09/2021 when he file this Application. Counting from the date when the impugned judgment was delivered on the 27/05/2021 to the date when this application was filed on 3/09/2021, more than 99 days had lapsed. It is undisputed fact the when the certified copies were supplied to the applicant, he still had an extra of 14 days which he did not account for.

It is trite law that in order to extend time, the applicant must explain the reasons for the delay for each day of delay. In the case of **Bushiri**

1. The first part of the document is a list of names and addresses.

2. The second part is a list of names and addresses.

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11. The eleventh part is a list of names and addresses.

12. The twelfth part is a list of names and addresses.

13. The thirteenth part is a list of names and addresses.

14. The fourteenth part is a list of names and addresses.

Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3/2007,
(unreported), the court of appeal held that:


*"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."*

On those observations and findings, it is obvious that the applicant has failed to adduce sufficient grounds for the delay to warrant the discretion of this court to extend time.

In the end, the application is without merit and is hereby dismissed with costs.

Dated at Dar es salaam this 20th day of July 2022.

It is so ordered.


B. S. Masoud.
Judge

