

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 14 OF 2021

(C/O Land Appeal No. 96 of 2018 of the District Land and Housing Tribunal for Rukwa
originating from Land Dispute No. 6 of 2018 of Lyowa Ward Tribunal)

(J. Lwezaura, Chairman)

TOBIAS S/O MAWELA APPLICANT

VERSUS

OSCAR S/O MAWELA RESPONDENT

RULING

Date: 24/02 & 04/03/2022

NKWABI, J.:

The applicant is seeking an order of this court for him to file an appeal out of time against the decision of the District Land and Housing Tribunal delivered on 8th July 2020. The application is preferred under section 38 (1) of the Land Disputes Courts Act, 2002 Cap. 216 R.E. 2002 and section 14(1) of the Law of Limitation Act, Cap. 89 R.E.2002 and any other enabling provisions of the law. The chamber summons is supported by the affidavit of the applicant.

In the supporting affidavit the applicant is advancing reasons that he delayed because he was misled by a Tribunal Clerk to leave, T.shs 42,000/= as fee for lodging a petition of appeal to appeal to the High Court on 28th July 2020. But when he made follow-up, he was told the receipt was lost and was advised to file an application to appeal out of time. He complained to the Tribunal chairperson and to the Judge in-charge of High Court, Sumbawanga Zone. He attached the letter of complaint to the Judge in-charge which is dated 23/04/2021 and the reply thereto, but did not attach the letter of complaint to the Tribunal Chairperson and a reply thereto if any.

This application was filed in this court on 24th May, 2021. There is an affidavit of the Court Process server to the effect that the respondent refused to receive the summons. The matter, therefore, proceeded in his absence.

In submission, the applicant urged that he filed his appeal but he was told that he had lodged the appeal out of time. He said he had lodge his appeal in time but it was the registry of the District Land and Housing Tribunal which mishandled his documents. He prayed to be allowed to file his appeal out of time.

After considering this application (affidavit) and submissions of the applicant, I have to observe that it is mundane law that, 'litigation has to come to an end', it cannot be open ended. See **Stephen Masato Wasira v Joseph Sinde Warioba and The Attorney General [1999] TLR 334**. It is to that end that for the court to extend time within which a party to do an act which ought to have been done and time has lapsed, sufficient reason has to be assigned for such order to be issued. That is the import of section 38 (1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 especially on its proviso.

I have seriously deliberated this application for extension of time within which the applicant to lodge the intended Misc. Land Appeal out of time to this court. I am of the firm view that this application has to go down swinging. The applicant has failed to account for each day of the delay. In **Bushiri Hassan v Latifa Lukio Mashayo**, Civil Application No. 192/20 of 2016 CAT (unreported) it was held:

"... 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."

The applicant was negligent in following up his alleged filed documents in the District Land and Housing Tribunal. He had 60 days to lodge his appeal in the District Land and Housing Tribunal. He claims he sent his documents on the 20th day after judgment was pronounced. So, he had 40 days to make follow-up if he really lodged his appeal documents. He does not say anything about those 40 days. He ought to have obtained the affidavit of the Bench clerk and the Chairman of the District Land and Housing tribunal averring that indeed it was their negligence or otherwise which caused the delay or technical faulty of the payment system if any. That was not done so, the applicant, therefore, has failed to account for each day of the delay.

Assuming that he was informed of the alleged mishandling of his documents at the District Land and Housing Tribunal after the lapse of the 60 days, which is around early September 2020, he stayed doing nothing or something which is not according to the law until 24th May 2021 when he filed this current application. Ignorance of the law has never been a sufficient

ground to warrant extension of time. This position was taken by the Court of Appeal in **Criminal Application No. 1/2016 Ally Kinanda & 2 Others vs The Republic**, CAT where it was stated that:

*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time (See for instance, the unreported ARS Criminal Application No. 4 of 2011 **Bariki Israel Vs The Republic**; and MZA Criminal Application No. 3 of 2011 – **Charles Salungi Vs The Republic**). To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness."*

It has been stated, in numerous occasions, in our jurisdiction that extension of time is a matter for discretion of the Court and that the applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time as it was stated in the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd, Civil Application No. 33 of 2015** CAT (unreported). The applicant did not put any material to this court in respect of his alleged lost receipt for filing fees he allegedly paid.

One would have expected him to have obtained an affidavit in that regard from the Chairman of the District Land and Housing Tribunal, just as I have indicated above.

In fine, the applicant has failed to account for each day of the delay. He has demonstrated negligence and or has failed to put to the court any material in respect of the alleged mishandling of the petition of appeal he allegedly lodged in the District Land and Housing Tribunal. No sufficient cause of the delay has been demonstrated to this court by the applicant. I dismiss the application as it is devoid of merits. I make no orders as to costs as the respondent did not appear.

It is so ordered.

DATED at SUMBAWANGA this 4th day of March, 2022.



J. F. NKWABI

JUDGE