

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 359 OF 2021**

*(Arising from the decision of the District Land and Housing Tribunal for Ulanga, at Mahenge in Land Appeal No. 211 of 2018, from Kichangani Ward Tribunal in Land Application No. 7 of 2018)*

**DUA NALONDO.....APPLICANT**

**VERSUS**

**MASHA MATENKA ..... RESPONDENT**

**RULING**

**13<sup>th</sup> June & 12<sup>th</sup> August, 2022**

**CHABA, J.**

This ruling is in respect of an application for enlargement of time within which the applicant, Dua Nalondo may be allowed to an appeal out of time against the judgment and decree of the District Land and Housing Tribunal for Ulanga in respect of Land Application No. 211 of 2018. The application was preferred under section 42 (2) of the Land Disputes Courts Act [Cap. 216 R. E. 2019] and section 14 (1) of the Law of Limitation Act [Cap. 89 R.E. 2019]. It is supported by the affidavit of the applicant stating the reasons why the application should be considered and granted as prayed.

The brief background to this application can be gathered from the applicant's affidavit. That, on the 23<sup>rd</sup> March, 2020, the Ulanga District Land and Housing Tribunal at Mahenge (the first appellate tribunal) through Land Appeal Case No. 211 of 2018 upheld the decision of Kichangani Ward

Tribunal in Land Case No. 7 of 2018. That means her decision was in favour of the respondent herein. Though it appears that the applicant was dissatisfied with the decision of the first appellate tribunal, but he failed to appeal within time, and therefore obliged to file before the High Court of Tanzania (Land Division, at Dar Es Salaam) Miscellaneous Land Application No. 287 of 2020, seeking for an extension of time to lodge his appeal out of time.

It is on record that, on the 23<sup>rd</sup> April, 2021 my sister (Mango, J.) heard and granted the prayers sought by the applicant to file his appeal out of time. The court was so clear that the applicant had to file his appeal within twenty-one (21) days from the date of extraction of the drawn order from that ruling and no order as to costs was awarded on the ground that such application was not contested. However, for reasons better known by the applicant he failed to lodge his appeal within the said 21 days. On 20<sup>th</sup> July, 2021, he once again brought in this court the instant application seeking for enlargement of time within which to file his appeal out of time against the judgment and decree of the first appellate tribunal.

The main reasons advanced by the applicant for his failure to lodge the appeal within 21 days are three: **One;** miscommunication with his advocate due to remoteness of the areas where he lives, **Two,** financial problems as he had no money to pay his advocate for preparation of the documents and **Three;** he lodged his appeal in time but filed the same direct to the High Court (T) instead of Ulanga Registry (the District Land and Housing Tribunal for Ulanga).

At the hearing of the application, parties agreed to dispose of by way of written submissions. Advocate Jumanne Sengomba drawn and filed the written submission on behalf of the applicant, whereas the respondent's submission was drawn and filed by the learned advocate Stumai Moshi Omary.

Having gone through the affidavits and written submissions advanced by both parties, I find that the only issue which needs consideration, determination and decision thereon at this stage is whether or not the applicant has managed to establish sufficient cause to warrant this court extend the time sought by the applicant.

To be frank, the applicant's submission does not account for each day of delay after the expiry of 21 days. It generally states that the applicant had a financial problem, remoteness from where he lives, miscommunication with his learned advocate and failure to file his appeal at the Registry of the District Land and Housing Tribunal for Ulanga. If one count from 23<sup>rd</sup> April, 2021 to 20<sup>th</sup> July, 2021 it is almost more than 50 days the applicant delayed to lodge his appeal. As much as he argued generally, I don't find any genuine reason(s) advanced before this court and perhaps managed to meet the three-tests mode of extending time as it was underscored by the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company LTD v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 CAT- Arusha (Unreported). In this case the court at page 6 held among other things that:

*"As a matter of general principle, it is the discretion of the Court to grant extension of time. But the discretion is judicial, and so it must be exercised*

*according to the rules of reason and just, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:*

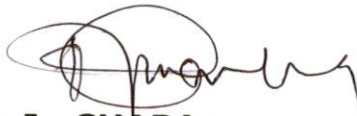
- a) The applicant must account for all the period of delay;*
- b) The delay should not be inordinate; and*
- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."*

Again, our Apex Court in the case of **Vodacom Foundation v. Commissioner General (TRA)**, Civil Application No. 107 of 2017 CAT - Dar es Salaam (Unreported) held among others that:

*"Delay 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. Those who comes to courts of law, must not show unnecessary delay, in doing so, they must show great diligence".*

Basing on the above precedents, I am in agreement with the respondent's submissions that the instant application has no merits and the same deserves to be dismissed with costs for the applicant's failure to account for each day of delay. Since the applicant totally failed to account for the delays of more than 50 days, and even failed to point out any irregularities in the trial tribunal's judgment, I find no merit on this application. Consequently, the application is hereby dismissed with costs. **It is so ordered.**

**DATED** at **MOROGORO** this 18<sup>th</sup> day of August, 2022.



**M. J. CHABA**

**JUDGE**

**18/08/2022**

**Court:**

Ruling delivered at my Hand and Seal of the Court in Chamber's this 18<sup>th</sup> day of August, 2022 in Chambers in the presence of Mr. Jumanne Semgomba, learned advocate who entered appearance for the applicant and the respondent who appeared in person, unrepresented.



**M. J. CHABA**

**JUDGE**

**18/08/2022**

Right to Appeal Explained.



**M. J. CHABA**

**JUDGE**

**18/08/2022**

