

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 368 OF 2022

(Arising from decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 721 of 2020 Hon. R. B. Mbilinyi- Chairperson dated 14th April, 2021)

FILEMON GODFREY.....APPLICANT

VERSUS

MAUA JUMA.....RESPONDENT

Date of last order: 9/8/2022

Date of ruling: 31/8/2022

RULING

A. MSAFIRI, J.

On the 8th day of July 2022, the applicant lodged an application in this Court by way of chamber summons under Sections 38 (1), 41(2) of the Land Disputes Courts Act [CPA 216 R.E 2019], Section 95 of the Civil Procedure Code [CAP 33 R.E 2019] and Section 4(1) of the Law of Limitation Act [CAP 89 R.E 2019], for the following orders;

- i. *That this Honourable Court be pleased to grant an extension of time to file appeal against a decision of the Miscellaneous Land Application No. 721/2020*

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District Land and Housing Tribunal for Kinondoni Hon.

R. B. Mbilinyi, Chairperson.

- ii. *Any other reliefs as this court may deem fit to grant.*

The application has been taken at the instance of Plateau Attorneys and is supported by an affidavit sworn by the applicant herein.

When this application was called on for hearing on 9th August 2022, Messrs Francis Munuo and Elia Mwingira, learned advocates represented the applicant and the respondent respectively.

It is gathered from the record of this application that, the respondent herein instituted Land Application No. 32 of 2019 at Makuburi Ward Tribunal (hereinafter referred as the trial Tribunal) against the applicant herein and two others namely Julias E. Ngwenga and Akili Mohamedi. The respondent was claiming that the applicant and his colleagues had trespassed on her land situated at Makoka-Shule. It is further discerned that the matter before the trial Tribunal was determined in the absence of the applicant herein.

After hearing the parties the trial Tribunal decided in favour of the respondent. The applicant and his colleagues being aggrieved with the

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judgment of the trial Tribunal intended to challenge the same but they were unable to do so timely. Hence they later on lodged Misc. Application No. 721 of 2020 for extension of time to appeal against the decision of the trial Tribunal before the District Land and Housing Tribunal for Kinondoni sitting at Mwananyamala (the DLHT). According to the record, the reason advanced by the applicant and his colleagues for failure to lodge the appeal in time were that, *they were not aware of the procedures for appealing.*

After hearing the parties in the referred application, the DLHT dismissed it for lack of sufficient reasons. That was on 14th April 2021. In this application the applicant was aggrieved with the ruling of the DLHT refusing extension of time within which to appeal against the decision of the trial Tribunal.

In both the affidavit as well as oral submission in support of the application by Mr. Munuo learned advocate, the major reason advanced by the applicant to have this court exercise its discretion for extension of time is allegation of illegalities on the trial Tribunal's decision. The said illegalities have been stated under paragraph 7 of the affidavit in support of the application. These are that the applicant was never served with summons to appear or defend before the trial Tribunal, the proceedings

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were instituted by the respondent without acquiring or having *locus standi to sue* and failure of the trial Tribunal to indicate how the visit to locus in quo was conducted.

Mr. Munuo submitted at length on each of the alleged illegality and he also referred to me litany of authorities to the effect that illegality is a sufficient ground for extension of time.

The application was opposed gallantly by the respondent in both the counter affidavit as well as the reply submission by Mr. Elia Mwingira. According to the learned advocate for the respondent, the applicant herein has failed to account for each day of the delay from 14th April 2021 when the ruling of the DLHT was delivered almost to 30th June 2022 when the application at hand was lodged about 447 days have lapsed.

Mr. Mwingira submitted further that the said period ought to have been strictly accounted on each day of the delay, but the applicant has not been able to discharge that burden. To fortify his stance, Mr. Mwingira has referred to me the decision of **Lyamuya Construction Co. Ltd v Registered Trustees of Young Christian Women Association of Tanzania** Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Arusha (unreported).

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On further submission Mr. Mwingira was of the view that no sufficient reason has been advanced to have the Court exercise its discretion for extension of time. On the issue of locus standi, Mr. Mwingira submitted that the trial Tribunal satisfied itself that the respondent was in possession of the property in dispute as a sole heir of her deceased's father.

On the allegations of not being served with summons, Mr. Mwingira submitted that there is sufficient evidence that the applicant was served several times but refused to enter appearance before the trial Tribunal. Hence the applicant was never denied right to be heard as envisaged under Article 13 of the Constitution of the United Republic of Tanzania of 1977, (the Constitution). On further submission by the learned advocate for the respondent, it was contended that the application has been overtaken by event since execution has already taken place on 20th June 2021.

On rejoinder Mr. Munuo essentially reiterated his submission in chief.

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

Parties to the present application are at one with the requirements to show sufficient reasons for application of extension of time like the present

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one. It is trite law that in an application for extension of time to do a certain act, like in present one in which the applicant seeks for an extension of time to appeal against the decision of the DLHT, the applicant must show good cause for failing to do what was supposed to be done within the prescribed time.

In the decision of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Limited** Civil Application No. 96 of 2007, Court of Appeal of Tanzania at Dar es Salaam (unreported), it was stated that what constitutes sufficient reason cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case.

After carefully going through the entire record, the decision of DLHT refusing the application for extension of time against the decision of the trial Tribunal was passed on 14th day of April 2021. The applicant if aggrieved with the said decision was required to appeal against it within 45 days from the date on which the said decision was delivered. Hence the appeal was to be lodged on or before 2/6/2021. The same was not done.

It was until 8th July 2022 when the present application for extension of time was lodged in this Court. This is over **one year** since the impugned

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decision was delivered. The affidavit in support of the application is **conspicuously silent** on what happened throughout the said period.

Equally it is on record that the decision of the trial Tribunal was delivered on 3rd December 2019 but the application for extension of time was lodged before the DLHT on 25th August 2020 almost over **eight months**.

Now in the application at hand, as I have stated before was lodged in this Court over a year since the decision of the DLHT was passed, I am of the settled mind that the applicant should have strictly accounted for each day of the delay. But the affidavit is silent on what happened.

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 Application No. 566/01 of 2018 (both unreported). As 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

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and that failure to do so would result in the dismissal of the application"

In **Bushfire Hassan v Latina Lucia Masaya**, Civil Application No. 3 of 2007 (unreported) The Court of Appeal stated 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."

The applicant has alleged existence of the illegality on the trial Tribunal's decision. I entirely agree with the applicant that allegation of illegality is a sufficient reason for extension of time. I also subscribe to the position that once the illegality has been established there is no need to account for each day of the delay. But in the present matter, the applicant is seeking for extension of time to appeal against the ruling of the DLHT in Application No. 721 of 2020.

The applicant has not alleged any illegality on the said ruling of the DLHT rather the illegality complained of is on the decision of the trial Tribunal. I am of the settled view as there is no any illegality complained of

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in the ruling of the DLHT then the applicant was duty bound to strictly account for each day of the delay which as I have stated before, the affidavit in support of the application is silent on what happened from 14th April 2021 to 8th July 2022 when the present application was filed in Court.

In the application for extension of time lodged before the DLHT, the single reason advanced by the applicant is that he was not conversant with the procedure for appealing. The allegations of illegalities were not raised before the DLHT. The learned advocate for the applicant, contended that although the same were not raised before DLHT they can still be raised on the second appeal because they are points of law.

I think Mr. Munuo missed the point. In the present matter this Court is not the second appellate court because there was no appeal entertained by the DLHT against the decision of the trial Tribunal rather it was an application for extension of time. This Court therefore could be the first appellate court against the ruling of the DLHT if the present application was to be granted. What is before this Court is an application for extension of time to appeal against the ruling of the DLHT in Misc. Application No. 721 of 2020.

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It is for the foregoing reasons that I hold that there is no reason let alone sufficient reason for extension of time advanced by the applicant to extend time for appealing against the decision of the DLHT in Misc. Land Application No. 721 of 2020. No illegality has been pointed out against the said decision.

Suppose I were to entertain the allegations of illegality on the matter before the trial Tribunal although the same were not addressed or raised in the application for extension of time, I am of the settled opinion that the alleged illegality can only be resolved through long argument contrary to the requirement that illegality should be apparent on the face of record. For instance whether the respondent had locus standi or not can only be resolved through long argument as well as through evidence.

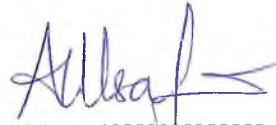
Equally the issue of visit of the disputed premises whether there was compliance with the law the same can only be determined through long drawn argument including also perusing the proceedings hence it is not an illegality apparent on the face of record.

In totality looking at the matter, there was a great degree of laxity and sloppiness on the part of the applicant. It took him **over a year** to

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lodge the present application for extension of time to appeal against the decision of the DLHT. Similarly **about 8 months** passed from the date when the decision of the trial Tribunal was passed to the date the applicant lodged Misc. Land Application No. 721 of 2020.

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



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A. MSAFIRI,
JUDGE
31/8/2022

