

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 510 OF 2022

(Arising from the Judgment and Decree of the High Court – Land Division at Dar es Salaam in Land Appeal No. 238 of 2020 dated 07 February 2022)

PELAGIA BUBELWA.....APPLICANT

VERSUS

GODFREY BUBELWA.....RESPONDENT

R U L I N G

Date of last Order:06/12/2022

Date of Ruling: 03/02/2023

K. D. MHINA, J.

This is an application in which the applicant, Pelagia Bubelwa, moves the Court to extend the time within which to lodge an application for leave to appeal against the decision of this Court (Mwenegoha, J) delivered on 08 February 2022 in Land Appeal No 238 of 2020.

The application has been brought by way of chamber summons, made under Section 47 (2) of the Land Disputes' Courts Act No.2, Cap 216 R: E 2019 ("the LDCA"), section 5 (1) (c) and 11(1) of the Appellate Jurisdiction Act, Cap. 141 R. E. 2019 ("the AJA") and Rule 11(1) of the Court of Appeal Rules. The chamber summons is supported by an affidavit deposed by Bitaho B. Marco, the counsel for the applicant.

At the hearing, Mr. Bitaho Marco, a learned advocate, represented the applicant. On the other hand, the respondent was represented by Mr. Amin Mshana and Mr. Rochus Asenga, also learned advocates.

When submitting, Mr. Marco stated that previously the applicant lodged similar applications, but the same were struck out for different reasons. These were Misc. Land Application No. 326 of 2022 and Misc. Land Application No. 85 of 2022 was also struck out.

He further submitted that the applicant tried every effort to seek for extension of time to file leave, but efforts went unrewarded. Therefore, the applicant has shown due diligence to ensure his appeal is heard. On this, he cited **Elibariki Aseri vs. Shifaya Mushi and Lewanda** (1998) TLR 81 to substantiate his submission.

In response, Mr. Mshana strongly opposed the application and submitted that there was no sufficient reason to grant an extension of time.

The applicant failed to explain what she was doing after the decision of the Court was delivered. Further, Misc. Land Application No. 326 of 2022, which the applicant referred to explain the time spent in court,

was not even filed by the applicant. Even the deponent was not the applicant; the one who deposed was Amanuel Rwegoshora Buberwa.

Mr. Mshana submitted that there was no explanation at all on what caused the delay; the same also the counsel failed to account for each day of delay.

He concluded by submitting that the application had been made without any seriousness and the affidavit recounted the historical background.

To add to Mr. Mshana's submission, Mr. Asenga advocate submitted that the counsel for the applicant failed to cite the enabling provision for moving the Court.

In a brief rejoinder, Mr. Marco submitted that the enabling provisions were contained in the chamber summons.

Regarding the issue of one Amanuel Rwegoshora Buberwa deponing the affidavit in the application, which was struck out, it was because he has a power of attorney to represent the applicant.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submission made by the

learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file leave to appeal.

The Court of Appeal of Tanzania stressed this in **Sebastian Ndaula vs. Grace Rwamafa (Legal Personal Representative of Joshua Rwamafa**, Civil Application No. 4 of 2014 (Unreported), where the Court put it succinctly that in an application for extension of time, good cause to extend must be shown.

As to what may constitute a good case, again, the Court of Appeal in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee and three others, Civil Application No 130/01 of 2020 (TanZlii)**, pointed out the following factors: -

- i. To account for all period of delay*
- ii. The delay should not be inordinate;*
- iii. The applicant must show diligence and not apathy, negligence, or sloppiness in the prosecution of the action that he intends to take and*
- iv. The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

In accounting for the period of delay, again, the Court of Appeal insisted that an applicant should account for each day of delay. In **Hassan Bushiri v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported), it 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."

Apart from the above in **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia [1999] TLR 182**, the Court of Appeal, established that illegality is sufficient ground to grant an extension of time.

I cited those cases with benchmarks to consider and test if the applicant passes the test by showing a good or sufficient cause.

Having gone through the affidavit and the submission by the applicant's counsel, he failed to indicate why the applicant delayed filing this application. He never advanced any reason apart from giving the narration of events of what happened since the matter started at the District Land and Housing Tribunal in 2015, the decision of this Court in

Land Appeal No 238 of 2020, which was delivered on 8 February 2022 and when this application was filed on 30 August 2022.

What the counsel submitted was the narration of events, and giving a narration of events has not been a good ground for extending time.

Further, the applicant failed to account for each day of delay from 8 February 2022 to 30 August 2022, while he should have accounted for each day of delay.

In his submission, Mr. Marco submitted that the applicant tried every effort to seek for extension of time to file leave, but efforts went unrewarded. But in the absence of good cause shown by the applicant, it is difficult for the Court to exercise its discretion. It is trite that the court's discretion must be exercised judiciously on the material before it.

Therefore, the applicant failed to demonstrate and advance good grounds to persuade this Court to exercise its discretion in granting an extension of time.

For the reasons above, I find no merit in this application, and consequently, I dismiss it with costs.

It is so ordered.

DATED at DAR ES SALAAM this 03/02/2023.




K. D. MHINA
JUDGE