

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 51 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Ilala in Misc. Land Application No. 221 of 2022 by Hon. Mgulambwa, Chairperson)

BILALI SHABANI APPLICANT

VERSUS

IBRAHIM SIMA RESPONDENT

RULING

Date of last order 14.03.2023

Date of Ruling 16.03.2023

A.Z.MGEYEKWA

This is an Application for an extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Ilala in Misc. Application No. 221 of 2022 delivered dated 15th November, 2022 by Hon. Mgulambwa, Chairperson. The Application was made under 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The application is accompanied by the Chamber Summons supported by the affidavit of Bilali

Shabani, the applicant. The application has encountered an impediment, the respondent has demonstrated his resistance by filing a counter affidavit deponed by Ibrahim Sima, the respondent.

When the matter was called for hearing on 14th March, 2023, the applicant enlisted the legal service of Mr. Kelvin Lupago and the respondent appeared in person, unrepresented.

Supporting the application, Mr. Kelvin adopted the affidavit deponed by the applicant, to form part of his submission. The learned counsel for the applicant submitted that the impugned decision was delivered on 15th November, 2022, and on 23rd November, 2022 the applicant wrote a letter requesting copies of the Ruling. Mr. Kelvin went on to submit that as per section 41 (2) of the land Disputes Courts Act Cap. 216 [R.E 2019], the last date for filing an appeal was on 20th December, 2022.

He continued to submit that the applicant requested the copies without success. Hence on 28th December, 2022, the applicant opted to file an appeal online but his application was rejected because he did not attach a copy of the impugned decision. Mr. Kelvin went on to submit that the applicant managed to receive the said copy on 1st February, 2023. Counting the days from the last date of filing an appeal before this Court to 1st February, 2023 was a lapse of 33 days. The learned counsel went

on to submit that on 2nd February, 2023 the applicant communicated with his advocate and they managed to file the instant application on 7th February, 2023. He stated that counting the days of delay from 1st February, 2023 to 7th February, 2023 is a lapse of 6 days. Therefore, in his view, the applicant delayed filing his application for 38 days. Mr. Kelvin submitted that the delay was out of his control and he was not negligent.

In conclusion, the learned counsel for the applicant urged this Court to allow the applicant's application.

In response thereto, the respondent's confutation was strenuous. He submitted that the applicant has admitted that he is out of time and he has not adduced sufficient reasons for his delay. The respondent contended that the applicant had a chance to make a close follow-up and take the initiative in making sure he receives the said copies within time. Ending, he urged this Court to dismiss the applicant's application.

In his short rejoinder, Mr. Kelvin reiterated his submission in chief. He insisted that the applicant made several follow-ups to no avail. He stated that it was hard for the applicant to obtain the copies within time because in December the Chairperson was on her vacation.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavits and

counter-affidavits, the issue for our determination is *whether the applicant has adduced sufficient cause to warrant this Court to grant his application.*

I have keenly followed the grounds contained in the applicants' affidavit and the respondent's counter-affidavit with relevant authorities. As rightly submitted by Ms. Batilda, the position of the law is settled and clear that an application for an extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice. The Court can only exercise such discretion judiciously if the party seeking to have the remedy adduces sufficient cause for the delay. Some of the preconditions for such a grant were underscored in the famous case of **Lyamuya Construction Co. Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, CAT-Civil Application No. 10 of 2010 (unreported) and **Ngao Godwin Lusero v Julius Mwarabu**, Civil Application No. 10 of 2015, CAT at Dar es Salaam. The said guidelines are:-

- (i) *The applicant must account for all the periods of delay*
- (ii) *The delay should 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.*
- (iv) *If the court feels that their other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

The applicant's Advocate has raised one limb for his delay. The applicant's reason for the delay as picked from the affidavit is onefold, he was following up on a copy of the ruling that dismissed his application. As amply submitted by the applicant's counsel, they wrote a letter requesting copies of the impugned decision. To support his contention the applicant attached a copy of a letter dated 18th November, 2022. The certified copy of the impugned Ruling is certified on 16th January, 2023. As per the applicant's affidavit specifically, paragraph 11 the applicant stated that after receiving the impugned Ruling the applicant instructed his Advocate to institute the instant application whereas on 7th February, 2023 the applicant filed the instant application before this Court.

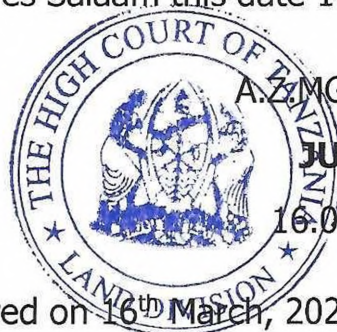
In my considered view, I find that the applicant has adduced sufficient cause for the delay. Bolstered by the decision of the case of **Ngao Godwin** (supra), I am convinced that the delay in taking action timeously is justified and it falls within the realm of acceptable delays and it cannot

be said that the applicant has exhibited any sense of loathness in dealing with this matter.

In view thereof, I hold that the applicant has passed the legal threshold set for extension of time and, accordingly, I grant the application. The applicant is ordered to file an appeal within thirty days from today. Costs to be in the cause

Order accordingly.

Dated at Dar es Salaam this date 16th March, 2023.

A. ZIMGEYEKWA
JUDGE
16.03.2023

Ruling delivered on 16th March, 2023 in the presence of the respondent.

A. ZIMGEYEKWA
JUDGE
16.03.2023