

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 751 OF 2022
(Arising from Application No. 19 of 2019)**

NSULWA NDINDILO NGUNDA APPLICANT

VERSUS

LETSHEGO BANK (T) LTD 1ST RESPONDENT

RUTH BONIFACE KOLLA 2ND RESPONDENT

SUMA JKT AUCTION MART 3RD RESPONDENT

RULING

Date of last Order: 06.03.2023

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A.Z.MGEYEKWA, J

In this application, the applicant prays for an extension of time to file an appeal. The application is brought under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The impugned decision is a Consent Judgment delivered by the District Land and Housing Tribunal for Temeke on 31st December, 2019.

The Application is premised on the grounds appearing on the Chamber Summons together with the supporting affidavit of Mr. Nsulwa Ndindilo Ngunda sworn on 23rd November, 2022. The 2nd and 3rd respondents were served through substitution of service via Mwananchi Newspaper dated 11th February, 2023 and the matter was set for hearing on 3rd March, 2023. However, both of them did not show appearance. Therefore this court granted the applicant's Advocate prayer to proceed *ex parte* against them.

When the matter was called for hearing on 6th March, 2023, the applicant enlisted the legal service of Mr. Idda Lawenja, learned Advocate and the respondent had the legal service of Mr. Alex Enock, learned counsel.

In support of the application, the learned counsel for the applicant urged this court to adopt the applicant's affidavit to form part of his submission. He stated that the applicant is praying for an extension of time to file an appeal against a Consent Judgment. It was his submission that the Tribunal had no jurisdiction to record the Consent Judgment and had no power to cancel the contract which was entered between the Bank and his client. To fortify his submission he referred this Court to paragraph 5 of the applicant's affidavit. He insisted that the duties of the District Land and Housing Tribunal are stated under section 33 of the Civil Procedure Code Cap.33 [R.E 2019]. He

forcefully contended that the District Land and Housing Tribunal has no power to deal with business matters.

Mr. Enock went on to submit that the applicant received a copy of the Judgment on 21st November, 2022 and noted that the Consent Judgment is contrary to the standards of the conduct prescribed by law.

In conclusion, the learned counsel for the applicant beckoned upon this Court to grant the applicant's application with costs.

The Application is contested. The 1st respondent filed the counter affidavit of Thadeus Massawe sworn on 30th January, 2023 in which he averred that the applicant has not adduced sufficient reasons for his delay. Ms. Idda urged this Court to adopt the 1st respondent's counter-affidavit and form part of her submission. She forcefully argued that there are no any good reasons for his delay, it is an inordinate delay and the applicant did not account for the days of delay. To fortify her submission, she referred this Court to section 41 (1) of the Land Disputes Courts Act, Cap.216 [R.E 2019] which state that the court may for any reasonable or sufficient cause extend time.

The learned counsel for the 1st respondent stressed that the applicant did not account for the days of delay. Ms. Idda stated that it is trite law that the applicant must account for the days of delay and ignorance of the law is not

an excuse. She valiantly argued that the applicant was negligent as a result he received the copy of the Consent Judgment after a lapse of one year.

Regarding the issue of jurisdiction, Ms. Idda simply contended that this ground is unfounded since they were supposed to raise the same at the appeal or review stage, not before this Court.

In conclusion, Ms. Idda urged this Court to dismiss the applicant's application with costs.

In his short rejoinder, Mr. Enock stated that the first respondent is not represented. He maintained his submission in chief. Stressing on point of Consent Judgment, Mr. Enock insisted that the agreement was between the first respondent and second respondent and the applicant was not aware of the existence of the said consent. He urged this Court to find that the applicant adduced good reasons for his delay to file an appeal. In such circumstances, Mr. Enock urged this Court to be pleased and grant the applicant's application for extension of time.

From the rival Advocates' submissions, the kernel of the contest is the question whether or not the applicant has shown good cause to justify his application.

The Court has noted that Ms. Idda introduced herself as an Advocate of the second respondent. However, from the record, it is clear that she is representing the first respondent, therefore, I proceed to correct the error accordingly.

To begin with, I wish to restate that the court's power for extending time is both wide-ranging and discretionary but it is exercisable judiciously upon good cause being shown. It may not be possible to lay down an invariable or constant definition of the phrase 'good cause' but the court consistently considers factors such as the length of the delay involved; the reason for the delay; the degree of prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion; the conduct of the parties, the need to balance the interest of a party who has a constitutionally underpinned right of appeal; whether there is a point of law of sufficient importance.

There are a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **Henry Leonard Maeda and Another v. Ms. John Anael Mongi**, Civil Application No. 31 of 2013 (unreported), the Court of Appeal of Tanzania decisively held:-

"In considering an application under the rule, the courts may take into consideration; such factors as the length of delay, the reasons for the delay, and the degree of prejudice that the respondent may suffer if the application is granted."

In addition, the courts emphasized the need to account for each day of delay, it is been underscored, as well, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. In **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No.4 of 2014 (unreported), the Court of Appeal of Tanzania when addressing the issue of delay 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."

This stance was followed in many decisions among them being the case of **Samo Ally Issack & Others v. R**, Criminal Appeal No. 136 of 2021 (unreported).

Reverting to the reasons for delay advanced by the applicant. Encapsulated in the applicant's affidavit, in considering the unaccounted days for delay, there is no dispute that the impugned Consent Judgment was delivered on

24th December, 2021. The period from 24th December, 2021 when the parties agreed to settle to 24th November, 2022 when the applicant filed the Miscellaneous Land Application No. 751 of 2022 seeking for extension of time to file an appeal to this Court, is a lapse of one year. Reading the applicant's affidavit clearly shows that the applicant has not accounted for the days of delay. The counsel for the applicant in his submission also failed to identify the delay to the effect that, he simply stated that the applicant received a copy of the Consent Judgment on 21st November, 2022 without accounting for the period that was spent by the applicant before filing the instant application.

In the circumstances, as far as the length of the delay is concerned, I entirely agree with the counsel for the 1st respondent, who rightly argued, that the applicant has failed to account for a delay of one year.

Regarding the ground of illegality. The law is settled that, when a claim of illegality is raised in an application for an extension of time, the same is considered as good cause to grant extension as stated in various decisions of the Court. However, with respect, I wish to state at the outset that, the error complained of herein in the judgment of the District Land and Housing Tribunal for Temeke, as evidenced by annexure N-2 of the supporting

affidavit, a copy of Consent Judgment is not and cannot be termed as illegality.

I have also scrutinized the applicant's affidavit specifically paragraph 8 and find that paragraphs (i), (ii) and (iii) are not points of law that are on the face of the record. In paragraph 8 (iii) the applicant referred to the illegality of the trial tribunal which was not raised at the appellate Court. I am not persuaded by the applicant's counsel submission that the trial tribunal faulted itself to determine a matter in which it had no jurisdiction while the matter was not determined instead the parties opted to settle the dispute outside the /tribunal process.

Therefore, in my view, the applicant has not laid a basis for a grant of the extension of time based on point of law. In the case of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). The scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of

*right, be granted an extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**" [Emphasis added].*

In the premises, in view of the circumstances obtaining in the present application, the observation of the Court in **Lyamuya Construction Company Limited** (supra) cannot apply for the reason that the matter was not determined on merit as parties opted to settle their disputes by preparing a Consent Judgment.

In consequence, thereto, hold that the applicant has failed to advance sufficient reasons to warrant this court to use its discretion to extend the time within which to file an appeal out of time. I proceed to dismiss the application without costs.

Order accordingly.

Dated at Dar es Salaam this date 6th March, 2023.




A.Z.MGEYEKWA

JUDGE

06.03.2023

Ruling delivered on the 6th March, 2023 in the presence of Mr. Alex Enock, counsel for the applicant, and Ms. Idda Lawenja, counsel for the 1st respondent.




A.Z.MGEYEKWA

JUDGE

06.03.2023