

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS LAND APPLICATION NO. 03 OF 2023

(Originating from the Decision of the District Land and Housing Tribunal of Songea at Songea in Land Application No. 36 of 2020)

MANSWEATUS DANIEL MWIMBA (Administrator of

the Estate of the Late Daniel Tosa Mwimba) **APPELLANT**

VERSUS

ZAKARIA KANDIDUS GOLIAMA **RESPONDENT**

RULING

Date of Last Order: 07/03/2023

Date of Ruling: 20/03/2023

U. E. Madeha, J.

To begin with, this is an application for extension of time made by way of chamber summons under section 41 (2) of the Land Disputes Courts Act, Cap 216 (R.E. 2019) as amended by the *Written Laws* (Miscellaneous Amendment) Act, No. 2 of 2016.

As a matter of fact, the Applicant prays for an extension of time to file an appeal out of time in order to challenge the decision of Land

Application No. 36 of 2022 delivered by the District Land and Housing Tribunal for Songea at Songea. This application is supported by the affidavit of Mansweatus Daniel Mwimba the Applicant.

It is worth considering that, at the hearing of this application, the Applicant was represented by none other than Mr. Nestory Nyoni, the learned advocate. The Respondent was unrepresented, he appeared in person.

Mr. Nestory Nyoni in his submission in support of the application -he prayed for this Court to adopt the Applicant's affidavit in support of the chamber summons. In fact, in the said affidavit it states that on 31st October, 2022 the Trial Tribunal delivered a judgment which was in favour of the Respondent herein. In that regard, the copy of the said judgement and its decree were annexed and collectively marked as annexure "P-1". Furthermore, he contended that on the same judgement date he applied to be supplied with copies of judgment and decree for the purpose of appeal. He was supplied with the copies of judgment and decree timely and on the 13th November, 2022 through the services of advocate Nestory Nyoni he filed an appeal to the High Court at Songea through e-filing system. Unfortunately, up to 16th January, 2023 the matter was not admitted in the

Court's System. To prove that he filed that appeal, the copy of the page of e-filing system (JDSD) was annexed and marked as annexure P-3.

Basically, he averred that due to such situation on 16th January, 2023, Mr. Nestory the learned advocate decided to make a follow-up by writing a letter to the Deputy Registrar of the High Court. Notably, on the following day that is on 17th January, 2023 the Deputy Registrar of the High Court at Songea replied on that letter which was annexed in the affidavit. In that letter the Deputy Registrar admitted that the High Court at Songea District Registry has no Land Division for the purpose of filing cases through e-filing system and he ordered the Applicant to file his appeal afresh. Principally, he further contended that the said appeal was filed on 13th November, 2022 but it was filed in the channel of which the admitting officer (Deputy Registrar) had no access. Apart from that, he further contended that the reasons for the delay of the appeal was actually beyond his control since the inconveniences were caused by the Court filing system. Lastly, he prayed for the orders sought in this application to be granted.

On the contrary, the Respondent replied that the Trial Tribunal delivered its decision on 30th October, 2022 and up to 15th December, 2022

there was no appeal which was filed by the Applicant. This is because he visited the Court to find out if he had appealed and found the Applicant had not yet filed an appeal. Similarly, he was very surprised to see that there is an application for the extension of time to file an appeal brought in this Court. In that regard, he advised this Court to consider the time available for the appeal, that is forty-five (45) days from the date of decision. Lastly, he prayed that the prayers sought by the Applicant for an extension of time to file an appeal out of time not to be granted.

On the other hand, Mr. Nestory Nyoni, the Applicant's learned advocate in his rejoinder submission he stated that the appeal was filed on time through the Court filing system (e-filing) on 13th November, 2022. However, the filing was not successful due to the fact that the e-filing system was not active. He concluded that, that was not the fault of the Applicant and it was beyond his control and he prayed for this application to be granted.

After going through the submissions of both parties in this application, that the Applicant claims that the appeal was filed on time, but the Court filing system failed to register that appeal. The Applicant had to go to the Deputy Registrar to make follow up on the admission of that

appeal. He was told that the admission system failed to admit that appeal. The Applicant has attached JSDS form indicating that he tried to file an appeal but it failed and a letter from the Deputy Registrar of the High Court at Songea showing that he filed an appeal early but the Court system failed to admit it.

Basically, the Respondent's submission, in a nut shell claims that the Applicant did not appeal and his submission are not correct and he is surprised to find that the Applicant had filed this application. He asked for the Court to check the forty-five (45) days in which the Applicant was allowed to appeal.

As a matter of fact, the issue here is whether the Applicant has sufficient reasons for this Court to grant extension of time to file an appeal out of time. As far as I am concerned, I will consider the letter of the Deputy of the Registrar which provides that the appeal was filed within the time limit but they filed it to the High Court Land Division and in the High Court Songea Registry, there is no High Court Land Division. As a result, he advised them in his letter to go and re-file their appeal instead the Applicant filled this application for extension of time in order to file an appeal.

It is important to note that, the judgment was delivered on 31st October 2022, whereby the Applicant filed an appeal on 13th November, 2022, and it was only fourteen (14) days from the day of judgment. Thus, the appeal was filed on time but it was incurred by the problem in the Court filing system (e-filing). Therefore, based on the evidence brought by the Applicant which shows clearly that he filed his appeal on time. The letter written by the Deputy Registrar clearly proves that the Applicant filed an appeal on time and he was ordered to file an appeal afresh but he decided to file the application for the extension of time. I am on the view that after being given the permission to refile his appeal on 17th January, 2023, the Applicant was to file an appeal directly and not to file this application since the Deputy Registrar of the High Court at Songea allowed him to refile his appeal.

It is worth considering that, I have gone through the High Court Deputy Registrar's letter that allowed the Applicant to refile his appeal and unfortunately, the letter did not indicate the days within which the Applicant was required to file his appeal. Basically, the letter that was written by the Deputy Registrar was supposed to show clearly the time duration within which the Applicant had to file his appeal.

In order for the extension of time to be granted to the Applicant, the Applicant has to show sufficient reasons for the delay. See the case of **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported), in which the Court of Appeal of Tanzania held that:

"It is trite law that an application for the extension of time is entirely in the discretion of the Court to grant or to refuse it. And that extension of time may be granted where it has been sufficiently established that the delay was with the sufficient cause."

The term sufficient cause has been defined by the Court of Appeal of Tanzania in the case of **Tanga Cement Company Ltd v. Jumanne D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported), in which it had this to say:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant".

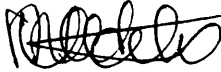
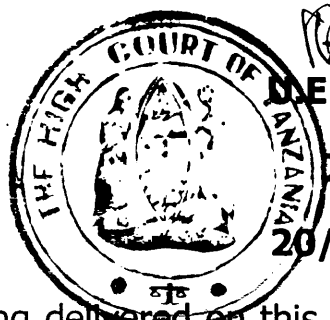
See also the cases of **Chawe Transport Import & Export Co. Ltd. v. Pan Construction Co. Ltd and Three Others**, Civil Application No.146 of 2005 (unreported) and **Standard Chartered Bank**

(Tanzania) Ltd v. Bata Shoe Company (T) Limited, Civil Application
No. 101 of 2006.


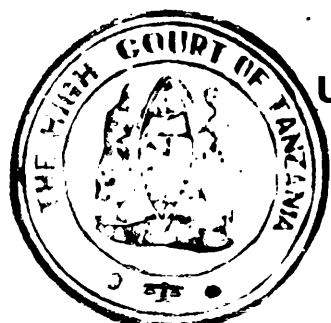
In the instant Application, I find that the Applicant has sufficient or good cause to enable this Court to exercise its discretion. I entirely agree that this application was brought within reasonable time and the Applicant's learned advocate was prompt and diligent in dealing with the appeal.

Therefore, I accordingly grant the application with no order as to costs. The Applicant is given fourteen (14) good days from the delivery of this ruling to file his appeal. Order accordingly.

DATED and DELIVERED at Songea this 20th day of March, 2023.



U. E. MADEHA
JUDGE
20/03/2023

COURT: Ruling delivered on this 20th day of March, 2023 in the presence of the Applicant and the Respondent. Right of appeal is fully explained.



U. E. MADEHA
JUDGE
20/03/2023