

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 799 OF 2022**

**HAMISI SAID CHAMBUSO ..... APPLICANT**

**VERSUS**

**ENTERPRENEURS FINANCIAL CENTRE (efc) ..... 1<sup>ST</sup> RESPONDENT**

**ALEX SHAYO .....2<sup>ND</sup> RESPONDENT**

**YONO AUCTION MART & AUCTION MART COURT**

**BROKERS ..... 3<sup>RD</sup> RESPONDENT**

**SENSITIVE AUCTION MART .....4<sup>TH</sup> RSPONDENT**

**RULING**

*16.03.2023 & 31.03.2023*

**A. MSAFIRI, J.**

This Application is for extension of time within which to file an appeal out of time. The application is made under Section 41(2) of the Land Disputes Courts Act, 2002 as amended by Section 41 of the Written Laws (Miscellaneous Amendment (No) Act 2016.

The Application is premised on grounds appearing on the chamber summons together with the supporting affidavit of Mr. Hamis Said Chambuso, the applicant himself. The respondents filed their counter affidavit to contest the application.

The hearing by the order of this Court, was by way of written submission as it was scheduled on 21.02.2023. The applicant represented

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himself, while the respondents were represented by Mr. Cleophas James learned advocate.

The applicant on his affidavit and in written submission, he submitted that, sometime in 2015, the 1<sup>st</sup> respondent advanced a loan of TZS. 13,000,000/- to the applicant, and that as a security to loan, the applicant mortgaged his house located at Ilala, Dar es Salaam. He said that he was active in payment of the returns in that for ten(10) months he has successfully paid the amount of TZS 8,090,001/=. That surprisingly, on their normal business, the 1<sup>st</sup> respondent issued a default notice of TZS. 18,112,303.40 through Ahadi Company Ltd.

The applicant submitted further that, the 1<sup>st</sup> respondent sold the applicant's mortgaged house to the 2<sup>nd</sup> respondent, the act which aggrieved him and he instituted Application No. 356 of 2016 before the District Land and Housing Tribunal of Ilala (trial Tribunal), challenging the said sale. That, the trial Tribunal nullified the sale and ordered the applicant to pay the outstanding loan within 45 days from the date of judgement. However the applicant was aggrieved and is challenging the trial Tribunal decision because it did not specify what amount of the outstanding loan which the applicant has to pay.

The applicant averred that, he filed an Application for Revision No.18 of 2021 before this Court but it was withdrawn on account of being time barred, hence he is seeking for an extension of time to file an appeal.

In reply submissions, Mr James Cleophas, learned advocate represented the respondents. He submitted that, the issue for determination in this application is whether the applicant has

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demonstrated sufficient grounds for this Court to exercise its discretion to extend time which is being sought by the applicant.

He further submitted that the applicant has not demonstrated sufficient good cause for extension of time, also the applicant has failed to account for each day of his delay which is almost two (2) years without any justification. That, the Judgment and decree of trial Tribunal were delivered on 06.11.2020 while the present application has been filed in this Court on 12/12/2022.

On the applicant's claims that he filed an application for revision which was withdrawn, the counsel argued that, the alleged advice by Hon. Mango J, to the applicant to file for extension of time was issued on 07/03/2022 as per the contents of the affidavit. That, still the applicant has not accounted on the days of delay on the said dates.

To bolster his point he cited the case of **Shanti vs Hindoche & Another**, (1973) E.A 207, where the Court defined the term '*sufficient cause*' and defined it to mean the cause which is convincingly '*beyond the Applicant's control*'.

Therefore, the counsel for the respondents prayed that this application be dismissed with costs.

In rejoinder, the applicant reiterated his prayers.

Having gone through the submission of the parties, it would appear that the issue for determination is whether the applicant has substantiated sufficient good cause to influence this Court to apply its discretionary power to grant him extension of time to file the appeal out of time. *Alte*.

It is a trite law that whoever wants to benefit with discretion of the Court in granting extension of time, one must show sufficient and good cause for the delay to do what was supposed to do within the prescribed time.

This was demonstrated in the case of **Benedict Mumello vs Bank of Tanzania, Civil Appeal No 12 of 2012**, where the Court of Appeal said as hereunder:

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

Besides, in the case of **Hans Paul Automechs Ltd vs. RSA Ltd** Civil Application No. 126/02/ of 2018 (unreported) the Court of Appeal of Tanzania at Arusha which cited an earlier case of **Alliance Indurance Corporation Ltd Vs. Arusha Art. Ltd** Civil Application No. 33 of 2015 (unreported) explained that:

*"Extension of time is a matter of discretion of the Court and the applicant must put **material** before the Court which will **persuade it to exercise its discretion** in favour of an extension of time."*

See also the case of **Bushiri Hassan vs Latifa Lukio Mashayo Civil Appeal No. 3 of 2007**(unreported) where the Court had this to say:

*"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 has to be taken."*

*Alle*



See also the **Oswald Masatu Mwizarubi vs Tanzania Fish Processors Ltd** CAT Civil Application No. 13 of 2010 (Mwanza Registry, unreported) dealing with an application for extension of time, Mjasiri J.A (*as she then was*) had this to say;

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon the circumstances of each individual case. **It is upon the party seeking extension of time to provide the relevant material** in order to move the court to exercise its discretion."*

In the instant application, the applicant did not bother to state any reason to persuade the Court to grant extension of time upon filing this application on 12.12.2022 while the decision intended to be challenged was delivered on 06.11.2020 which is almost two years later. The applicant only kept on analysing what had happened between him and the defendants, which is irrelevant as far as this application is concerned.

The only requirement for the applicant was to substantiate sufficient good cause as to why the application was not filed within the legally prescribed time.

In that regard, I find this application to have no merit. The application is dismissed with no order as to the costs.

It is so ordered.

  
**A. MSAFIRI**  
**JUDGE**  
**31/03/2023**



THE HIGH COURT OF TANZANIA  
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