

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

MISC. LAND CASE APPLICATION NO.44 OF 2022

*(Arising from the District Land and Housing Tribunal for Kinondoni in
Land Application No. 197 of 2017)*

JOFREY SEMBE RAJABU.....APPLICANT

VERSUS

MAYAYA SHILINDE POLE.....RESPONDENT

RULING

Date of Last Order: 02.03.2023

Date of Ruling: 29.03.2023

T.N MWENEGOHA J

The present Application has been broached herein under section 41(2) of the Land Dispute Courts Act, Cap 216 R.E 2019. The applicant is seeking for the Order of extension of time so as to file an Appeal out of time, against the decision and Orders of the District Land and Housing Tribunal for Kinondoni at Mwananyamala, *vide* Land Application No.197 of 2017, before Hon. Mbilinyi R-Chairman. The aforementioned Application goes along with the affidavit of the applicant one Jofrey Rajab Sembe.

The same was heard by way of written submissions. The applicant was represented by Advocate Bahati Nyasuni Misso. In her submissions she insisted that the applicant's delay to file his intended appeal within time was caused by the sickness of his parent. That, the applicant had to travel to Bukoba from the 19th May, 2019 to take care of his parent (father), including working on the treatments for him. He came back to Dar Es Salaam on the 2nd July, 2022, and it was upon that time, the applicant realized that, he was out of time to initiate the intended appeal. It is for this reason, the applicant's counsel insisted this application should be allowed. To back up her submissions, she cited Article 107B(2) which reads together with Article 13(6) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time to that effect.

Advocate Gabriel Maros for the respondent in his reply was of the view that, the applicant has no sufficient reason for his application to be allowed. That, even if we decide to believe that annexure "B" is genuine, it is not possible for the applicant to be on travel from 19/05/2022 and 02/07/2022, still there is no legal justification for filing this application on the 31st January 2023. Therefore, there is a period of 6 months unaccounted for. Further, it is not true that the applicant on the dates he mentioned that he was in Bukoba, as he is seen to have collected the

copies of judgment and decree on the 15th June 2022 at 03.09p.m see annexure MSP-1. The respondent's counsel cited a number of authorities to cement his arguments, including the case of **Principle Secretary, Minister of Defence and the National Service versus D.P Valambhia**, (1992) TLR.

I have given consideration the submissions by counsels for both parties. Also gone through the affidavit and counter affidavit in the Court's record. The pertinent issue for determination is whether the instantaneous application has merits or not. To answer this issue, I urge to be guided by the decision of **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD**, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported), where it was observed that; -

"...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 his affidavit as well as the submissions from her learned counsel, the applicant has insisted that, he was taking care of his sick father in Bukoba.

He went there from Dar Es Salaam on 15/5/2022 and came back on 02/07/2022. And that is the cause of his delay to lodge his intended appeal. The records at hand (annexure B) show that, the impugned decision was delivered on the 18/05/2022 in absence of the parties. Thus, giving him benefit of doubt, this Court assumes it is true that he was at Bukoba during that material period.

However, what is missing on his part, is the proof that his father was seriously sick and he was taking care of him. Because that is the reason prevented him from filing his intended appeal within time and not otherwise. In absence of this proof, this court is left with no choice other than believing that the applicant travelled to Bukoba to take care of his other dealings. Hence, the delay in question resulted from his own negligence. Above all, as argued by the respondent's counsel, there is a period which has not been accounted for by the applicant. This runs from 02/07/2022 when he came back from Bukoba to 31/01/2023 when this Application was lodged. As correctly stated in the case of **Oswald Masatu Mwinzarubi** (*supra*), we don't have rules guiding the courts to identify a sufficient reason capable of enlarging the time. Rather, it is the duty of the applicant himself to provide the relevant material facts in order to move this Court to exercise its discretion in his favour. In the

Application at hand, I find that the applicant has failed to adduce sufficient cause to warrant this Court to exercise its discretion judiciously.

From the foregone, this Application is devoid of merit and it is dismissed without costs. It is so ordered.




T.N. MWENEGOHA.
JUDGE
29/03/2023