

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 27 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Ilala at Ilala in Land Application No. 3 of 2019 before [Hon. A.R. Kirumbi-Chairman] dated 26th day of September, 2022.)

CITY PLAZA LIMITED.....APPLICANT

VERSUS

DELHI DARBAAR DSM LIMITED.....RESPONDENT

RULING

18/04/2023 & 27/04/2023

A. MSAFIRI, J

Essentially, this Court, has been moved upon to grant an extension of time for the applicant to file an appeal against the impugned decision of the District Land and Housing Tribunal for Ilala at Ilala in respect to Land Application No. 3 of 2019 before Hon. A.R. Kirumbi-Chairman delivered on 26th day of September, 2022. The present application is brought under Section 41 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019] and Section 14 (1) of the Law of Limitation Act [Cap 89 R.E 2019].

The application is supported by an affidavit affirmed by one Suheil Kassim, the Principal Officer of the applicant which was filed on 19th day of January, 2023. On the other hand, it was contested *vide* the counter

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affidavit affirmed by Mushtaqali Ramzanali Damji, the Principal Officer of the respondent filed on 13th day of February, 2023.

By the order of this Court dated 16th day of March, 2023, parties were directed to argue the application by way of written submissions and the applicant acted in conformity with the Court's order except for the respondent who, for the reasons known to herself, she failed to comply with the Court's schedule order thus the matter was heard *ex-parte* against her.

Arguing in support of the application, Mr. Said Habibu Mbandu, learned advocate for the applicant submitted that, it is a settled principle of the law that, in order for the application for extension of time to be granted the applicant has to show sufficient grounds as stated in the case of **Yusuph Same & Hawa Dada vs. Hadija Yusuph**, Civil Appeal No. 1 of 2022, (CAT), (Unreported).

He added that, what amount to good cause includes whether the application was brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant as it was cemented in the decision of **Hassan Abdulhamid vs. Erasto Elphase**, Civil Application No. 402 of 2019 quoting the case of **Tanga Cement Company Limited vs. Jumanne D. Masangwa & Amos A. Mwalwanda**, Civil Application No. 6 of 2001, (Unreported).

He stressed that, the applicant's delay to file the appeal within the time before this Court, was due to the fact that he was availed late with the copies of Judgment and Decree necessary to attach in the appeal. To bolster his proposition, he referred this Court to Section 19 (2) and (5) of the Law of Limitation Act [Cap 89 R.E 2019]. Additionally, he cited the

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case of **Lewin Benard Mgala vs. Lojas Mutuka Mkondya & Two Others**, Land Appeal No. 33 of 2017, (HCT-MBEYA), (Unreported) and that of **Fortunatus Masha vs. William Shija & Another**, [1997], TLR 154.

Having gone through the applicant's affidavit in support of the application, respondent's counter affidavit in opposition of the application and written submissions by the applicant thereof, I am of the considered view that the issue is whether the applicant have established sufficient cause(s) for this Court to extend time within which she can file appeal out of time in this Court.

As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. Guidelines have been formulated by the Court of Appeal of Tanzania to that effect as expounded in the eminent case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010 (Unreported) at page 6 & 7 of the Ruling of the Court thus: -

- a) The applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient*

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importance; such as the illegality of the decision sought to be challenged.

In the light of the applicant's affidavit as a whole, Mr Mbando has failed to account for the period of delay at all save he submitted that the applicant has delayed for the period of seventy (70) days but he did not make any account of each day of delay as the requirement in the **Lyamuya's case** (*supra*).

In the case of **MPS Oil Tanzania Limited & 2 Others vs. Citi Bank Tanzania Limited**, Civil Application No. 4 of 2016, it was held that:

"...In an application for extension of time, the position of this Court has consistently been to the effect that the applicant has to account for every day of the delay".

On that note, it is undeniable that, the copies of Judgment and Decree in Land Application No. 3 of 2019 were availed to the applicant on 9th day of November, 2022 after expiration of time to file the appeal before this Court. But the applicant filed this Application on 19th day of January, 2023 again after lapse of seventy (70) days on the reason that he was looking for another advocate to engage. So, to speak, this has never been a genuine reason for enlargement of time under the given circumstances, the fact that the issue was to file an appeal against the impugned decision and not to pursue it in the future, so, the delay was inordinate and there was absolute negligence on the side of the applicant.

I deem it apposite to borrow a leaf from the case of **Magnet Construction Limited vs. Bruce Wallace Jones**, Civil Appeal No. 459 of 2020, (CAT-MUSOMA), (Unreported) at page 9 and 10 of the Judgment of the Court which principled that;

"Indeed, for the Court to exercise that discretion, the applicant must satisfy it that since being aware of facts of delay that he is out of time, his conduct must portray that he acted expeditiously and diligently in lodging the application for extension of time...In the instant appeal, we are satisfied that the appellant failed to account for the period of 51 days after Misc. Labour Application No. 7 of 2020 was struck out till when the application for extension of time was formerly lodged before the High Court as correctly conceded by Mr. Njowoka in his submission at the hearing of the appeal. Consequently, we dismiss the first and second ground of appeal".

As such, I associate with Mr. Martin Frank that since the days of delay were not accounted for, no proof of a letter requesting for the copies of Judgment and Decree to signify her efforts taken than mere aversions, no justifiable reasons put forward to warrant this Court to grant the application, the same faces nothing than the fate of dismissal.

Having said so, despite the matter had proceeded *ex-parte*, the applicant has failed to establish plausible reasons to have this Court exercise its discretion judiciously in granting the application. Consequently, the same is dismissed for being devoid of merit. Parties shall bear their own respective costs.

Order accordingly.

Dated at Dar es Salaam this 27th day of April, 2023.


A. MSAFIRI
JUDGE

