

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 21 OF 2023**

*(Arising from the Judgment of the District Land and Housing Tribunal for Ilala District as Application No. 27 of 2022 dated at 22/07/2022 before Hon. Kirumbi Chairman)*

**JOHN KIMBORY ..... APPLICANT**

**VERSUS**

**FRANCIS CHARLES LUBETI ..... RESPONDENT**

*06/04/2023 & 25/04/2023*

**RULING**

**A.MSAFIRI, J**

This ruling is in respect of an application for an extension of time to file an appeal against the decision of the District Land and Housing Tribunal for Ilala (herein the DLHT) in Land Application No. 27 of 2022.

The application is preferred under the provisions of section 41(2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019], Section 14(1) of the Law of Limitation Act Cap 89 [R.E. 2019] and any other enabling provision of the law.

The application is supported by an affidavit deponed by John Kimbory (the applicant). The applicant has set out the grounds on which an extension of time is sought. The respondent has stoutly opposed the application by filing a counter affidavit deponed by Francis Charles Lubeti (the

*Alle -*

respondent). The matter was disposed by way of written submissions whereas both the applicant and the respondent were unrepresented.

On his submission the applicant adopted his affidavit to form part of his submission. He stated that he is applying for extension of time to file appeal out of time to this Court against the decision of the DLHT before Hon. Kirumbi Chairman in Application No.27 of 2022.

He stated that the Judgment before the DLHT was delivered in favour of the respondent on 22.07.2022, and that on 29.07.2022 the applicant wrote a letter applying for a copy of Judgment before the DLHT, whereas that the Judgment was not delivered to him until on 23.12.2022 as per annexure J-4 attached to the affidavit. That by the time when the copy was obtained, it was already out of time hence the reason of this application.

The applicant submitted further that the delay to appeal on time was not caused by his negligence but due to the reason that the DLHT failed to supply the Copy of Judgment on time as it was requested by the applicant seven days from the date of the Judgment. He added that, the decision in Application No. 27 of 2022 in the DLHT before Hon. Kirumbi was full of illegality and irregularities that need to be attended by this Court.

Cementing on the above reasons, he cited the case of **Zengo Daudi Nzije vs. Faustine Msemakweli** in Misc. Land Application No. 424 of 2022 in the High Court of Tanzania Land Division at page. In the cited case, section 19(2) of the Law of Limitation Act Cap 89 [R.E. 2019] was referred to which provides that in computation of time the day on which the Judgment complained of was delivered, and the period of time

*Atty.*

requisite for obtaining a copy of decree or order appealed from shall be excluded. He prayed that this application be granted with costs.

On the other hand, the respondent submitted his reply where he contended that the applicant did not account for each day of delay. He stated that the Application No. 27 of 2022 before the DLHT was delivered on 22.07.2022 but that this Application before this Court was brought on 16.01.2023, the respondent averred that it was more than five months delay and it was unaccounted.

The respondent stated further that the claim that the applicant met Hon. Kirumbi Chairperson on 23.11.2022 who told him the Judgment was not ready, has to be supported by an affidavit of the said Hon. Kirumbi Chairperson to justify that the applicant was making follow-ups.

Cementing on that he cited the case of **Dianarose Spareparts Ltd vs. Commissioner General Tanzania Revenue Authority**, Civil Application No. 245/20 2021, CAT, Dar es Salaam.

The respondent argued that, there is no reminder letter from the applicant to show that he was making a close follow-ups.

He added that the attached Payment bill dated 23.12.2022 has no connection with the said Judgment as it does not contain case Number, hence that in the absence of such proof the Court must draw inference that the applicant received the Judgment on the date the Judgment was delivered or the date he requested for the said Judgment.

He stated that the applicant did not show any illegality in Application No. 27 of 2022. He prayed that this application be dismissed with costs because the applicant is abusing the court process.

*Alle*

Having gone through the submission of the parties, it appears that Application No. 27 of 2022 was delivered on 22.07.2022. The applicant requested for a copy of Ruling on 29.07.2022, and that the requested Ruling was signed by the Tribunal Chairman and ready for collection on 14.09.2022. However, it seems the Ruling was obtained by the applicant on 23.12.2022 and by that date the applicant was completely out of time for 150 days.

Despite the fact that the applicant had requested for copy of the ruling on 29.07.2022, it is apparent that the DLHT did not notify the applicant when the copy of Ruling was ready for collection on 14.09.2022 whereas by that time, the applicant was still within time as it was the 54<sup>th</sup> day from the date of ruling. I think I should not shoulder the blame on the applicant and condemn him upon the DLHT's failure to notify the applicant about the requested Ruling after it was ready for collection.

However, despite the fact that the applicant had already delayed for 137 days before the Ruling was handed over to him, still he kept on delaying for other more 24 days after the impugned Ruling was handed to him and he gave no reason for delay.

I say so because the applicant has pointed out that one of the reasons for delay was due to the DLHT failure to supply Ruling to him on time, which I opted to agree with him, but it appears that even when the Ruling was finally supplied to him, still he did not act immediately until on 16.01.2023 when the applicant filed this application. The delayed 24 days from when the Ruling was delivered to him have not been accounted for.

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

*'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.'*

Again, the reason of illegality in the instant case has not been established, a mere allegation that there was illegality in Application No. 27 of 2022 without any justification or pointing out the said illegalities cannot suffice extension of time. Illegality once alleged it has to be revealed and has to be apparent on the face of record so as satisfy the Court to grant extension of time. See the case of **Principal Secretary, Ministry of Defence and National Service vs Divran P. Valambhia [1992] T.L.R 387** where the Court of Appeal held that; -

*"In our view when the point at issue is one alleging illegality of the decision being challenged, the Court has a duty even if it means extending the time for the purpose to ascertain the point and if the **alleged illegality be established**, to take appropriate measures to put the matter and the record right" [Emphasis is mine].*

On the above reasons it is my finding that the applicant has failed to advance sufficient good reasons for the extension of time. Basing on the findings, I dismiss the application with costs.

Order accordingly.

  
**A. MSAFIRI**  
**JUDGE**  
**25/04/2023**