

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

MISC LAND APPLICATION NO. 580 OF 2022

*(Originated from the District Land and Housing Tribunal at Kinondoni in
Misc. Land Application No. 326 of 2014 dated 13/08/2015)*

**ANETH NKUBA PAULO (K.N.Y
ZAITUNI ABDALLAH ATHUMANI.....APPLICANT**

VERSUS

PATRICK LUSIANO MBEDULE.....RESPONDENT

RULING

08/02/2023 & 28/02/2023

L. HEMED, J

Aneth Nkuba Paulo (K.n.y Zaituni Abdallah Athumani) is the applicant in this matter. The application has been brought under section 38(1) of the Land Disputes Court [Cap 216 R.E 2019] and Section 95 of the Civil Procedure Code, [Cap 33 RE 2019]. The respondent to this matter is one Patrick Lusiano Mbedule, the decree holder. The applicant is seeking for the following orders:-

*" a) That this Honourable Court be pleased to extend time
in which the applicant to lodge the appeal out of time*

against the decision of Kinondoni District Land and Housing Tribunal in Misc. Land Application No. 326/2014 dated 13/08/2015 .

b)Costs of this application follow the event.

c) Any other further relief (s) that this Honourable court may deem fit, and equitable to grant (sic)“.

The application was determined *exparte* following the non appearance of the respondent despite service, including the substituted service by publication in Mwananchi News Paper of 29th October, 2020. Ms. Martha Mohamed, learned advocate was the one representing the applicant at all the material time.

Submitting before us, she adopted the affidavit deponed by one Zaituni Abdallah Athumani to firm part of her submissions. She further asserted that the law requires the applicant to account for each day of the delay. According to Ms. Mohamed, the applicant delayed for 30 days which were used to prepare and collect some important documents to process the application. Having heard the submissions made by the learned counsel for the applicant, my duty now is to examine whether good cause has been established to warrant this court grant extension of time as prayed. It should be noted that on 29th November, 2017 this court, Hon. I. Maige, J (As he then was)

delivered ruling striking out Land Appeal No. 107 of 2015 on the ground that it was incompetent for being accompanied with a detective ruling of the District Land and Housing Tribunal for Kinondoni (DLHT). In the said appeal, the applicant herein was challenging the decision of the DLHT refusing to grant leave to her to appeal against the decision of the Ward Tribunal for Wazo out of time. While striking out, the court gave to the applicant/appellant 45 days within which to file a proper appeal.

According to paragraph 9 of the supporting affidavit, the applicant made follow – up to the trial tribunal so as to obtain the correct ruling and collected it on 30th July, 2018, while 45 days given by this court had already lapsed. In paragraph 10 of the affidavit, the applicant confesses that her advocate negligently could not process the appeal. On 19/08/2022 she visited the legal assistance and social welfare at Temeke for legal assistance where she was told that she was out of time.

The present application was filed on 20th September, 2022 about four (4) years or 56 months from 29th November, 2017 when this court had directed the proper appeal to be filed. It is my firm view that four (4) years of delay is quite inordinate. I have gone through the affidavit supporting the application I could not find any where stated as to what the applicant was doing in all four (4) years of delay. In other words, the applicant has not

accounted for all the days of delay. In **Lyamuya construction company Limited V. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania set a guideline for extension of time as follows:-

a) The applicant must account for all days of the delay.

b) "The delay must not be inordinate.

c) The applicant must show diligence, and not apathy negligence or sloppiness in the prosecution of the action he intends to take.

d)"

In the present case, apart from the days of delay being not accounted for, it is obvious that four years period is enough to conclude that the delay in this matter was inordinate. The said length of the delay implies sloppiness and negligence on the party of the applicant.

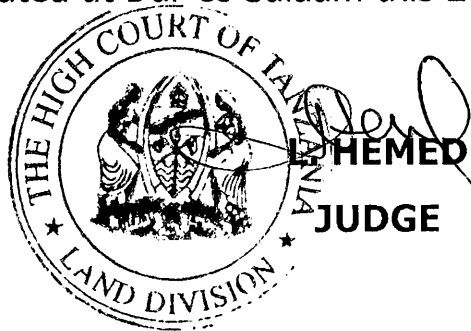
The applicant in her affidavit has attempted to level blames to the previous advocate for failure to act promptly in processing the appeal. I am of the firm view that the applicant cannot exonerate herself for being also the cause. I am holding so because a sober, prudent and determined person could not leave the matter in the hands of advocate for four (4) years without making a follow up. She was duty bound to make follow – up of her case

and not to desert everything to the advocate. After all, **in Yusuph Same and Another vs. Hadija Yusufu**, Civil Appeal No. 1 of 2002, the Court of Appeal of Tanzania observed that:-

"Generally speaking, an error made by an advocate through negligence or lack of due diligence is not sufficient cause for extension of time".

From the foregoing, I am convinced that the applicant has demonstrated no good and sufficient cause to warrant this court grant extension of time to lodge her appeal. I have no option but to dismiss the entire application. Application is dismissed without costs. I order so.

Dated at Dar es Salaam this 28th February, 2023.



COURT:

Ruling is delivered today 28th February, 2023 in the presence of Ms. Martha Mohamed for the applicant. Right of appeal fully explained.

