

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

MISC. LAND CASE APPLICATION NO.59 OF 2023
{Arising from Land Application No.41 of 2014, by Ilala District Land and Housing Tribunal}

HASRAM RAJAB MBWETE.....1st APPLICANT
PATRIC MARCO MTANGA.....2ND APPLICANT
VERSUS

SAID SADICK SELEMAN.....1ST RESPONDENT
MWALIMU YUSUPH MKUTA.....2ND RESPONDENT
AGATA AUCTION MART.....3RD RESPONDENT

R U L I N G

Date of Last Order: 27.04.2023
Date of Ruling: 25.05.2023

T. N. MWENEGOHA, J.

The applicant is seeking for an order of extension of time so that he can lodge an appeal out of time, against the Judgment and Decree of Hon. Bigambo, Chairperson of the District Land and Housing Tribunal for Ilala District, vide Land Application No.41 of 2014, dated 11th September, 2020.

The Application was brought under Section 41(2) of the **Land Dispute Courts Act, Cap 216, R. E. 2019**, and accompanied by the affidavit David Ndindilile, Advocate for the applicants. The same was heard by way of written submissions.

Mr. Ndindilile, for the applicants, after praying the applicant's affidavit to be adopted and form part of his submissions, gave two reasons for the applicant's delay to pursue his intended appeal. Firstly, that, he was not supplied with the copies of Judgment and Decree within time. The Judgment was delivered on the 11th September, 2020 and the same were given to the applicant on the 18th November, 2020. Therefore, in computing the time for appeal, this period should be excluded.

Secondly, immediately after obtaining the copies, a Misc. Application No. 674/2020 was filed on 25th November, 2020 which was later dismissed. Then they filed another Application, vide Misc. Application No. 394 of 2021 which was also struck out on the 14th February 2023, with leave to refile on the 15th February 2023. Therefore, the delay was not caused by negligent on part of the applicants, rather reasons beyond their control. It was argued that, there are illegalities in the impugned decision of Hon. Mbuga which need the attention of this Court. Mr. Ndindilile referred the Court to various cases including the cases of **The Principal Secretary, Ministry of Ministry of Defence** and **National Service versus Devram Valambhia (1992) TLR 387 Said Sadiki Selemani versus Hasram Rajabu Mbwete and 3 Others.**

Advocate Isaac Nassor Tasinga, appeared for the respondent and his submissions were that, the applicant has failed to give sufficient reasons for his Application to be allowed. He did not account for each day of delay. That, there is a period from 11/09/2020 when the decision was delivered to 31/12/2020, about 111 days unaccounted for. From 1/1/2021 to 31/12/2021, 365 days unaccounted for. And from 1/1/2023 to 14/2/2023, about 45 days unaccounted for. Therefore, there are a total of 885 days which were not accounted for by the applicant. He cited among others

the case of **Attorney General versus Mkongo Building and Civil Works Contractors Ltd and Matombo District Council, Misc. Civil Application NO.266/61 of 2016, Court of Appeal of Tanzania at Dar es Salaam.**

In his rejoinder, the applicant's counsel reiterated his submissions in chief and insisted that, the Application at hand has merits as the applicants have accounted for all the days they delayed in taking their intended course.

I have considered the submissions of parties through their respective counsels. Also gone through the joint affidavit and counter affidavit against the Application. The issue for determination is whether the Application has merits or not. Three reasons were advanced by the applicants and their Advocate to be the cause of the delay to appeal within time.

Firstly, that the trial tribunal did not supply the applicant with the copies of the impugned Judgment and Decree within time. The records at hand show that, the said documents reached the applicants on the 18th December, 2020. The Application at hand, was filed on the 14th of February, 2023, more than two years from the date when the documents were supplied to them.

Hence the 2nd reason comes in, that, immediately after obtaining the copies of the Judgment and Decree, the applicant started to prosecute other cases bonafidely, vide Misc. Application No. 674/2020 which was filed on 25th November, 2020 and was later dismissed. Then they filed another Application, vide Misc. Application No. 394 of 2021 which was also struck out on the 14th February 2023. In my opinion, the time of

about two years or more, from the date the applicants obtained the copies of Judgment and Decree up to the day the instant Application has well been accounted for by the applicants. They have provided sufficient proof of the existence of these cases and what transpired in Court leading to the delay in pursuing their intended appeal, **see annexures MP 10- MP 12**. Lastly, the applicants' Advocate claimed that, the impugned decision contains illegalities that need the attention of the Court.

For these reasons explained above, I am of the settled views that, the applicant have succeeded in giving sufficient reason for their delay and also, they have well account for all the days they delayed. Therefore, they deserve the enlargement of time as prayed for their appeal to be lodged, see **Oswald Masatu Mwinzarubi versus Tanzania Fish Processors LTD, Court of Appeal of Tanzania, Civil Application No. 13 of 2010 (Mwanza Registry, (unreported) and Victoria Real Estate Development Ltd versus Tanzania Investment Bank and Others, Civil Application No. 225 of 2014, Court of Appeal of Tanzania at Dar es Salaam (unreported).**

In the end, I find this Application to have merits. The applicants are given 7 days to lodge their appeal from the date of extraction of the copies of this Ruling. No order as to costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

25/05/2023