

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC.LAND CASE APPLICATION NO. 663 OF 2022

HALIMA SHAABAN.....APPLICANT

VERSUS

HUSSEIN JAFARI.....1ST RESPONDENT

ESTHER ZABRON CHACHA.....2ND RESPONDENT

R U L I N G

20/12/2022 & 23/2/2023

L.HEMED, J.

In this Application, which is made under section 41(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] and section 95 of the Civil Procedure Code, [Cap 33 RE 2019], **HALIMA SHAABAN** is seeking for the following orders against the respondents, **HUSSEIN JAFARI** and **ESTHER ZABRON CHACHA:**

- "1. That this Honorable Court be pleased to extend time to the applicant to file the appeal out of time to this Honourable Court against the ruling of the Misc. Application No.13 of 2013 delivered on 15th day of August 2022 by Hon.R.L. Chenya, Chairman (sic)*

2. *Costs follow the event.(sic)*
3. *Any other further relief(s) that the Honorable Court may deem fit, just and equitable to grants."*

It should be noted that in the impugned ruling, the learned chairman closed the execution proceeding of the decree in Land Application No.84 of 2011 pursuant to Regulation 30(2) (a) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN. No.14/2003. In the said Ruling the chairman observed and marked the decree to have been fully executed. The Applicant seems to be aggrieved by the said ruling. However, she could not challenge the decision in time, hence the application at land.

The application was argued by way of written submissions. At all material time, Mr. Sostheness Edson learned advocate represented the applicant while Mr. Benson Mphatso learned advocate was appearing for the 2nd respondent. The 1st respondent never appeared despite being served by way of substituted service by publication in Mwananchi News paper dated 3rd day of December, 2022. In the circumstance the matter proceeded *ex parte* against the 1st Respondent.

This being an application for extension of time, the applicants duty was to demonstrate "**good cause**" which prevented her from filing the appeal within time. According to the affidavit deponed by the applicant and the submissions made in support thereof, is that, the main cause for the delay was the trial tribunal's delay to supply to her copies of impugned ruling. It was the assertion of the applicant that the ruling was delivered on 15th day of August 2022 and the copies of the same were given to her on the 4th day of October, 2022.

In her reply submissions, the 2nd respondent contended that the applicant has shown no good cause for this Court to grant the application at hand. She stated that the applicant never accounted for each day of the delay from 4th October 2022 to 24th October 2022 when this application was filed.

In the instant case, the crucial issue is whether the delay was with good cause. The applicant's only ground found in her affidavit and submissions is that, the delay to appeal in time was caused by the trial tribunal delay in supplying her with copies of ruling. From what has been stated by the applicant, in paragraph 11 of the affidavit, the impugned ruling

was delivered on 15th day of August 2022. According to paragraph 13 of the affidavit of the Applicant, she collected the copy of the ruling of the trial tribunal on the 4th day of October 2022, after the Statutory time to appeal had elapsed. However, she lodged the present application on 24th day of October 2022. From the 4th day of October 2022 to 24th day of October 2022, it is about twenty (20) days. I have gone through all 16 paragraphs in the affidavit deponed by HALIMA SHAABAN to support the application, I could not find anything stated as to what the applicant was doing in the said twenty (20) days. In other words, the applicant did not account for the 20 days of the delay.

In **Elius Mwakalinga vs Domina Kagaruki and 5 others**, Civil Application No.120/2012 of 2018, the Court of Appeal of Tanzania had this to say:-

"a delay of even a single day has to be accounted for otherwise there should be no point of having rules prescribing periods within which certain steps have to be taken."

Together with the above cited case, in the circumstance of this matter, the applicant ought to account for each day of the delay to the requirement

of the law as from 4th October, 2022 to 24th October, 2022 of which have not been done. In **Lyamuya Construction Company Ltd v/s Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No.2 of 2010, the Court of Appeal of Tanzania set the guidelines to be considered by the Court in the exercise of its discretion to extend time. At Page 6 of the Court decision it stated thus:-

"the following guidelines may be formulated:-

- (a) The applicant must account for all 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."*

In the present application, the applicant, apart from failure to account for each day of delay from the 4th October 2022 to 24th October 2022, she appears to have been negligent and sloppy in following up copies of the ruling at the trial tribunal. I have observed that the ruling of the trial tribunal was delivered on 15th August 2022. The applicant did nothing until on 22nd August 2022 when she wrote a letter to the Tribunal applying for copies of the ruling. From 22nd August 2022, the applicant did nothing to follow up

copies of the ruling as there is no evidence on record that she wrote a reminder letter to the trial tribunal.

From the foregoing, I find that no good cause has been shown to warrant this court grant the Application. The entire application is hereby dismissed with costs. It is so ordered.

Dated at Dar es Salaam this 23th February, 2023.



L. HEMED
JUDGE
23/2/2023



COURT; Ruling delivered in the presence of Mr. Benson Mphatso learned advocate for the 2nd respondent this 23rd February 2023. Right of appeal explained.



L. HEMED
JUDGE
23/2/2023

