

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

MISC LAND APPLICATION NO. 277 OF 2023
(Arising from Temeke District Land and Housing Tribunal,
Application No. 37 of 2022)

FATUMA SHEFA AYOUB.....APPLICANT

VERSUS

ATHUMANI MOHAMED TUWANO.....1ST RESPONDENT

EQUITY BANK LIMITED.....2ND RESPONDENT

RULING

10-13 July, 2023

E.B. LUVANDA, J

This an application for extension of time to file an appeal against the decision of the trial tribunal dated 21/11/2022. In the affidavit in support of the application, the Applicant named above, grounded delay to have been attributed by delay by the trial tribunal to release copy of ruling and proceeding from 23/11/2022 when the Applicant applied the same to 30/12/2022 when were supplied; Two, from 2nd – 16th January, 2023 she fall sick; Three, she filed Misc. Land Application No. 43/2023 which was struck out on 24/02/2023; four, she applied for ruling on 28/02/2023.

In a counter affidavit, the first Respondent stated that the Applicant failed to account for each day of delay a total of 76 days elapsed from 24/02/2023 when the application was struck out to 10/05/2023 when this application was filed, which amount to negligence.

Mr. Sosthenes Edson learned Advocate for the Applicant submitted that the reason for delay was caused by the trial tribunal for failure to supply copy of judgment and proceedings in time, from 22/11/2022 to 30/12/2022. He cited section 19(2) of the Law of Limitation Act, Cap 89 R.E. 2019, a case of **Lazaro Mpigachai vs. Republic**, Criminal Appeal No. 75/2018, C.A.T. He submitted that from 2nd to 16th January, 2023, the Applicant fall sick, argued that medical sheets or report is not a statutory requirement, citing **Mwana Mohamed vs. Ilala Municipal**, Misc. Land Application No. 12 of 2020 H.C. Land Division. The learned Counsel submitted that on 30/01/2022 the Applicant filed Misc. Application No. 43 of 2023, for extension of time, which was struck out on 24/02/2023 on concession of the defect. He cited the case of **Masunga Mbegeta vs. 784 Others vs. The Honourable Attorney General and Another**, Civil Application No. 173/01 of 2019 C.A.T, for a proposition that delay arising from prosecution of another application amount to good cause. Also cited section 41(1) of the Land Disputes Courts Act, Cap 216 R.E 2016. The learned Counsel submitted that there are

material illegality occurred in the decision of the trial tribunal, require determination by this court. He cited **Attorney General vs. Tanzania Ports Authority and Another**, Civil Application No. 87 of 2016, C.A.T, **Copper vs. Smith (1884) 26 C.L.D**, 700 at page 710.

In reply, Mr. Hope Jaffer Kawawa learned Counsel for first Respondent, submitted that the Applicant negligently defaulted to collect a judgment on 22/12/2022, when it was ready for collection. That Misc. Application No. 43 of 2023 was struck out because of negligency. The learned Counsel submitted that, the Applicant purport to be sick for 14 days from 2nd to 16th January, 2023, but she did not account for the remained 52 days. He distinguished the case of **John David Kasheka** (supra) being irrelevant, because the Applicant therein produced medical sheet unlike the Applicant herein. He submitted that the alleged illegality were addressed by the trial tribunal. He distinguished **Copper** (supra), for it was quoted in piece meal omitting relevant part to this case. He also distinguished **Masunga** (supra) being irrelevant, since there is no any illegality in the impugned judgment.

It is true that in the affidavit in support, the Applicant did not state as to what transpired after requesting ruling of Misc. Land Application No. 43 of 2023 via her letter received at the Registry of this court on 28/02/2023

being four days from the delivery of the ruling on 24/02/2023. The first Respondent, in his counter affidavit, faulted the Applicant for negligence for the delays of uncounted 75 days. However to my view, each case must be treated based on its merits and circumstances. To this end, to fault the Applicant for being negligent, laxity, deliberated default, relaxation as suggested by the learned Counsel for first Respondent, need to be ascertained in its totality regarding the conduct of the Applicant immediately after pronouncement of the decision, she is intending to challenge. Herein, after delivery of the impugned judgment on 21/11/2022, one day after to wit on 23/11/2022 the Applicant requested for a copy of judgment, which was availed to the Application on 30/12/2023. Similarly, after her application No. 43 of 2023 was struck out on 24/02/2023, the Applicant requested for its ruling on 28/02/2023 and intimated that she intend to refile another application, added in her letter that she remain at the disposal of the court and honour any directives issued by the court. That statement alone is impressive, that indeed the Applicant was passionate to pursue her cause to have her appeal heard by this court. I have ignored the alleged illegality, because were not pleaded in the affidavit, as such were taken in the submission as an after thought.

For reason stated above, I allow the Applicant to present her appeal within 21 days counting from the date of this ruling.

The application is granted. No order for costs.



E.B. LUVANDA
JUDGE
13/07/2023