

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

MISC LAND APPLICATION NO. 265 OF 2023

(Arising from Application No. 318 of 2016)

AHMED SALUM MFAUME.....APPLICANT

VERSUS

GETRUDE VENDELIN KISIMA.....RESPONDENT

RULING

17th-20th July, 2023

E.B. LUVANDA, J

This is an application for extension of time to file appeal against the decision of the trial Tribunal in Application No. 318 of 2016 dated 17/01/2020.

The grounds taken for moving the court to extend time are two fold: prosecuting a series of applications and other action taken after delivery of the impugned judgment; illegality (determination of the impugned application *ex parte* while the application for extension of time to file the defence to wit Misc. Application No. 301 of 2017 was still pending for ruling; the trial Tribunal decision was entered without having

jurisdiction as the amended application in Application No. 318 of 2016 was filed out of time without leave and no filing fee paid, contrary to regulation 3(1) of the Land Disputes Courts (the District Land and Housing Tribunal Regulations, 2003.

In the counter affidavit, the Respondent opposed the application in that judgment was delivered on 17/01/2020 and four years elapsed without the Applicant doing any effort to appeal, within the available 45 days to appeal. That the intended appeal has no overwhelming chances of success since the Applicant has failed to show cause and account each day of the delay.

Mr. Alex Enock learned Counsel submitted that all the time the Applicant was in the trial Tribunal requesting the Tribunal ordering boundary recovery prior resorting to the demolition of the Applicants building so as to settle the dispute by allowing the execution to be done after the boundary recovery being made in the presence of both parties, which later on proved failure. He submitted that there are illegalities, in that the trial Tribunal denied the Applicant's right to be heard after deciding to proceed with hearing *ex parte* (sic, *ex parte*) while there was a pending application for setting aside *ex parte* (sic, *ex parte*) order made via Misc.

Application No. 301/2017 which was pending before the same chairman.

On the illegality, the learned Counsel for Applicant submitted that the Tribunal decision was illegally entered as the amended (sic, application) was filed out of time for being filed beyond the prescribed time on the date when the order for amendment was granted and was filed without payment of the filing fees as required by the law, citing regulation 3(1) of Regulations 2003 (supra). He cited the case of **Amour Hatibu Salim vs. Hussein Bafagi**, Civil Application No. 52/2009 CAT at Dar es Salaam; **TANESCO vs. Mfungo Leonard Majura & 15 Others**, Civil Application No. 94/2016 CAT at Dar es Salaam.

In opposition, the Respondent whose her submission were drawn *gratis* by Ms. Abia Richard learned Advocate under sponsorship of Women's Legal Aid Centre (WLAC), submitted that the Applicant has no sufficient reason to be allowed to appeal out of time, in that for his application to be granted has to establish sufficiently that the delay was within a sufficient cause. She submitted that the Applicant remained silent from 2020 to 2023 without taking any action if he discovered that there was illegality. She cited the case of **Mtengeti Mohamed vs. Blandina Chacha**, Civil Application No. 44/17 of 2022 C.A.T. She submitted that

the Applicant failed to demonstrate a satisfactory explanation for his inordinate delay to file the appeal for 3 years from 17/01/2020 when judgment was delivered. She cited the case of **Ratman vs. Cumara Samy** (1965) 1WLR 10, Page 12.

Also cited section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019; **Tanga Cement Company vs. Jumanne D. Masangwa & Another**, Civil Application No. 6/2001 CAT; **Praygod Mbagwa vs. Government of Kenya Criminal Investigation Department and Another**, Civil Reference No. 4/2019 CAT at Dar es Salaam, for a proposition that the court can only exercise its discretion to grant extension upon good cause and sufficient reasons for delay. She cited **Oswald Masatu Rwizarubi vs. Tanzania Processing Ltd**, Civil Application No. 13/2010, C.AT; **Dar es Salaam City Council vs. Jayantilal P. Rajani**, Civil Application No. 27/1987, C.A.T, for interpretation of a phrase reasonable or good cause and also what amount to sufficient cause. On the alleged illegality, she submitted that the trial Tribunal was correct to proceed *ex parte*, because the Applicant was granted an opportunity to be heard but he refused to enter appearance, he was served with summons but decided to sleep over his rights. She cited the case of **George Timothy Mwaikasu vs.**

National Bank of Commerce, Misc. Application No. 41/2020 HC Labour Division, **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2/2010, for a proposition that the Applicant ought to account for each day of delay from 17/01/2020 when judgment was delivered to the date filing this application.

It is true that in order for the court to exercise its discretion to extend time, the Applicant ought to demonstrate reasonable cause for delay and good cause for extension of time.

Herein, the Applicant deposed that while he was awaiting delivery of ruling in Misc. Application No. 301/2017 for extension of time to file W.S.D and to set aside the *ex parte* order, the trial Tribunal proceeded *ex parte* to determine the main suit, to wit Application No. 318/2016, and delivered the *ex parte* judgment on 17/01/2020, which was preceded by application for Execution No. 251/2020. When Ms. Jucaco Auction Mart was at the verge of executing the decree *ex parte* by way of demolition, the Applicant filed Misc. Application No. 58/2022 and 98/2022 seeking review of the demolition order and an order for boundary recovery, which later prayer was granted on by the Tribunal

on 18/05/2022, but later revoked and vacated by the same Tribunal on 27/04/2023 by striking out both Misc. Applications No. 58/2022 and 98/2022 on the ground that the Applicant ought to challenge the impugned verdict in the decree *ex parte* to the High Court and not making it to the same courts, as per paragraphs 5, 8, 10, 11 and 13 of the affidavit. In the counter affidavit, the Respondent did not apportion any substantial materials to challenge averments in the above paragraphs, apart from dispelling them in seriatim.

In view of the narration above, the Applicant plea that he was busy prosecuting other course over the impugned *ex parte* judgment is valid. Although it can be said that the Applicant did not specifically account for each and every day of delay, but to my view he exhibited efforts he made to remedy the situation, as aforesaid. Therefore, the argument by the Respondent that the Applicant decided to sleep on his rights, is unentertainable in the circumstances I have endeavoured to demonstrate above.

With reference to the illegality, it was the argument of the learned Counsel for Applicant that when Misc. Application No. 301/2017 for extension of time to file written statement of defence to the amended application, as evidenced by a copy of a counter affidavit (annexure M-

2 to the affidavit) which was filed by the Respondent herein, and submission in chief in support of application (annexure M-2 to the affidavit) filed by the Applicant herein, confirming that the application was heard. Surprisingly the trial Tribunal proceeded to dispose the main suit Application No. 318/2016 via *ex parte* judgment delivered on 17/01/2020, and three months later on 24/03/2020 the trial Tribunal struck out Misc. Application No. 301/2017 alleged it was due to want of prosecution, as reflected in the ruling of Misc. Application No. 98/2022 (annexure M-5 to the affidavit at page four last paragraph). The trial Tribunal made no comment regarding submissions filed therein. This is irregular on the face of record. This irregularity alone suffices to warrant this application to sail through. In the case of **TANESCO vs. Mufungo Leonard Majura & 15 Others**, Civil Application No. 94 of 2016, C.A.T, the apex Court had the following to say;

"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 of ascertain the point and if the illegality be established, to take appropriate measures to put the matter and record right"

In view of the above, I grant the Applicant extension of 14 days to file the appeal to challenge the decision of the lower Tribunal in Application No. 318/2016. The 14 days will commence running as from the date of this ruling.

The Application is granted. I make no order for costs because the Respondents pleadings were drawn gratis by Women's Legal Aid Centre (WLAC).



E.B. LUVANDA
JUDGE
20/07/2023