

**IN THE HIGH COURT OF THE UNITED OF REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION No. 326 OF 2023**

**JOSEPH OSMUND MBILINYI ..... APPLICANT**

**VERSUS**

**REGISTRAR OF TITLES .....1<sup>ST</sup> RESPONDENT**

**ASSISTANT COMMISSIONER FOR LANDS.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last Order: 03/08/2023*

*Date of Ruling: 22/08/2023*

**A.MSAFIRI. J.**

The applicant has brought this Application under Section 102 of the Land Registration Act [Cap 33 R: E 2019] and Sections 2(1) 2(2) and 2(3) of the Judicature and Application of Laws Act. [Cap 358 R: E 2019] and Section 95 of the Civil Procedure Code, [Cap 33 R.E 2019], (the CPC).

He is seeking for an order of extension of time to file a notice of intention to appeal against the decision of the Registrar of Titles and Assistant Commissioner for Lands made on 12<sup>th</sup> May 2022. The

*Atts.*

Application is supported by an affidavit and supplementary affidavit both sworn by the applicant himself, Joseph Osmund Mbilinyi and it is opposed by the joint counter affidavit and joint counter affidavit to the supplementary affidavit of the respondents both sworn by Lucy Kimario, State Attorney.

The hearing of this application was done by way of written submissions whereby Mr Haji Mlosi, learned counsel represented the applicant, whereas Ms Lucy L. Kimario, learned counsel represented the respondents. The parties have adhered to the schedule of written submission as ordered by the Court.

Counsel for the applicant submitted that the reason for the applicant's delay in filing the notice of intention to appeal and appeal was delay in supply of the copy of the rectification as he was served with notice of rectification on 10<sup>th</sup> June 2022, requested the copy by a letter written on 25<sup>th</sup> June 2022 and was supplied the requested copy on 25<sup>th</sup> May 2023. He said that as he was supplied with the copy on 15<sup>th</sup> May 2023 in the form of declaration and by that time he was out of time set under Section 102 of the Land Registration Act. He argued that from 15<sup>th</sup> May 2023, 26 days has lapsed and the applicant could not proceed with lodging of the

*Atts.*

notice of intention to appeal. He added that this is clearly shown at paragraphs 7,8,9,10,11 and 12 of the affidavit.

He further submitted that the reason stated is sufficient to warrant the extension of time. To cement his point, he relied on the decision of **Fred Robi Chacha vs. Lidya Marwa Kitengwe**, Civil Appeal No. 16 of 2022, HC, Mwanza Registry (unreported) where it was held that the term "sufficient cause" should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence, resulting in the delay in taking necessary steps. He prayed for the Court to grant the Application with costs.

In reply to the counsel for the applicant's submission, Ms Lucy Kimario stated that the copy of rectification is not a decision that is subject to appeal but it was rectification of the errors in the Land Register. She further submitted that rectification of the land registration does not fall under the provision of Section 102 Land Registration Act (supra). She argued that the applicant had knowledge of the existence of rectification since 10<sup>th</sup> June, 2022.

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Ms Kimario pointed that, the applicant served respondents on 11<sup>th</sup> July 2022 with the statutory notice of intention to sue. However, he did not pursue his right until 12<sup>th</sup> April 2023 when he filed an Application for extension of time to apply for leave of prerogative orders, Misc. Civil Application No. 14 of 2023. She argued that from the date the applicant received a notice of rectification to the date Misc. Civil Application No. 14 of 2023 was filed, there are about 300 days that are not accounted for.

She cemented her arguments by citing the case of **Lyamuya Construction Company Limited vs Board of Registered of the Young Woman Christian of Tanzania**, Civil Application No 2 of 2010 and **Elias Kahimba Tibenderana vs Inspector General of Police and Another**, Civil Application No 388/01 of 2020 (unreported). She submitted further that the delay of 58 days from 12<sup>th</sup> April 2023 to 29<sup>th</sup> May 2023 when this Application was filed is caused by the applicant's negligence. Lastly, she prayed for this Application to be dismissed with costs.

In rejoinder, the applicant's counsel reiterated in his submission in chief and submitted that the delay was caused by the respondents *Alls.*

who failed to serve him the copy of the decision of rectification on time. He reiterated his prayers.

Having gone through the rival submissions made by the parties, my duty is to deliberate on whether good cause has been demonstrated by the applicant to warrant this Court grant leave to file his notice of intention to appeal and appeal out of time under Section 102 of the Land Registration Act. The aforesaid provision does not specifically provide for the factors to be considered by the Court in determining whether or not to extend time. However, in the case laws, Courts have developed guidance in assessing whether or not good cause has been established by the Applicant seeking for extension of time.

In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of young Women's Christian Association of Tanzania, (supra)**, the Court of Appeal set out the following guiding factors;

*a) The applicant must account for all the period for delay*

*b) The delay should not be inordinate.*

*Aelle-*

- c) The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

In the application at hand, I have gone through the affidavit and supplementary affidavit deposed by the applicant in support of the application. It is stated that the applicant discovered that the 1<sup>st</sup> respondent has issued a notice of rectification to him in regard of the suit property and that the notice was issued on 10<sup>th</sup> June 2022 but was not served to him. That, on 25<sup>th</sup> June 2022 he wrote a letter to the 1<sup>st</sup> respondent requesting for a copy of the said rectification but the same was not issued to him until 15<sup>th</sup> May 2023. Upon receipt of the said copy, the applicant filed the current application on 29<sup>th</sup> May 2023.

Section 19 of the Law of Limitation Act, Cap 89 R.E 2019 provides for exclusion of periods when a party is seeking or has not received a copy of judgment or decision complained of. In the application, I have been satisfied with the reason advanced by the applicant that he was delayed in getting a necessary copy of the decision for rectification which

*Alles*



was necessary for the lodging of the notice of appeal and the intended appeal.

Even if the applicant could have been aware of the intended rectification since 10<sup>th</sup> June 2022, he could not have pursued his right to challenge the said decision through the intended appeal until he was supplied with a copy of the said decision. I find that the applicant has advanced good and sufficient cause for delay to warrant this Court to grant him an extension of time which he seek.

Consequently I find this Application to be meritorious and the same is hereby granted. The applicant is granted 14 days from the date of receipt of this ruling to lodge the notice of intention to appeal and time to appeal. I make no order as to the costs.

It is so ordered.

  
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**A. MSAFIRI, J**

**JUDGE**

**22/8/2023**

