

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 271 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 271 of 2023, Hon. Wambili, Chairman)

ELIZABETH JACKSON BISWALO

(As Administratrix of the Estate of the Late

JACKSON MWENDA BISWALO)**APPLICANT**

VERSUS

GODLOVE NOMBO**RESPONDENT**

R U L I N G

Date of last Order: 01 August 2023

Date of Ruling: 18 October 2023

K. D. MHINA, J.

This application has been preferred under Section 41(2) of the Land Disputes Courts Act Cap 216 (R.E 2019)

The chamber summons is supported by the applicant's affidavit, which expounds the grounds for the application

The applicant inter alia is seeking for the following orders:

- i. That, this Honourable court be pleased to extend time within which the Applicant may lodge an appeal before this Honourable Court against the judgment and decree of the*

District Land and Housing Tribunal for Kinondoni District dated 12 December 2023, before Hon. Wambili, Chairman out of time.

The chamber summons is supported by the affidavit affirmed by Elizabeth Biswalo, the applicant, which expounds the grounds for the application.

What prompted the filing of this application can be briefly explained as follows;

It started at the DLHT for Kinondoni in Application No. 223 of 2015, where the respondent claiming that the applicant had trespassed into land and upon full trial the tribunal decided in favour of the respondent and he was the applicant in that case.

The applicant herein being aggrieved by the said decision wants to appeal against tribunals judgement hence this application

The application was heard by way of oral submission, and the applicant was represented by Mr. Augustine Masanja, learned counsel, while the respondent by Ms. Agnes Maigwa, also a learned counsel.

To support the application Mr. Masanja submitted that the reason for delay was because the judgment of tribunal was not supplied on time. Therefore, it was out of control for the advocate and the applicant.

He substantiates his submission by the decision of the Court of Appeal in **Robert Sanganya vs. R**, Criminal Application No. 59/01/2022 (**Tanzlii**) and **African Banking Corporation vs T-Batter Holding Co. Ltd**, Civil App No 369/01/2021 (Tanzlii) where it was held that the delay which is out of control of the applicant is a sufficient ground for extension.

He further submitted that according to paragraphs 5, 6 and 7 of the affidavit the delay was not caused by negligence.

He concluded by submitting that after being supplied with the copy of judgment they discovered that there was issue which cause a miscarriage of justice.

Objecting the application, Ms Maigwa submitted that, as far as extension of time is concerned the applicant has to account for each day of delay.

In this application the applicant has failed to account for each day of delay. It is just mere words without proof.

Further, she submitted that at paragraph 6 and 7 of the affidavit the applicant agreed that she was served with the application for extension of time to file Bill of cost on 28/4/2023, then she became aware. Further she submitted that the applicant was supposed to file this application on

the following date but instead to file on the 10 May 2023 even though she signed it on the 5 May 2023.

Further Ms Maigwa submitted that this is a delay of which the applicant failed to account. In **Lyamuya Construction Co. Ltd vs Board of Registered Trustee of Young Womens Christian Association of Tanzania** (Civil Application No 2/2010) and **International Airline Internal Emaate Vs Nassor Nassor**, Civil Application No 263 of 2016 at page 10 it was held that the applicant has to account for each day of delay.

In this matter the applicant failed to do so and there is no any kind of proof. The application is inordinate as it failed to show proof of such a delay.

On the issue of illegally paragraph 8 of the affidavit the application failed to indicate that illegality. Mere words without indicating illegality on face of it (apparent) is suffice for this Court to grant extension of time.

The applicant failed to show any proof that the chairman did not consider the opinion of assessors. The law is clearly that the chairman should consider the opinion but not bound as per S. 24 of the LDCA.

Further, in para 9 & 10 of the affidavit cannot amount to be illegalities or irregularities rather they could be the grounds of appeal.

But on the other hand, the trial tribunal considered the evidence and reach to the just decision. In **Lyamuya case (Supra)** it was held that illegality must be on points of law. In **Valambia case (1992) TLR 402** also account that position pleading of illegality is not an automatic ground, rather one has to establish the same in order to invoke that illegality.

Further regarding para 5 of the affidavit, that there were some efforts but the council for the applicant failed to proof how they made the efforts, as there is no any request letter of the affidavit of the court clerk. The applicant has failed to account for delay as per the cited case of **Robert Sanganya vs Republic**, Criminal Appeal No. 59/01/2022

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submissions, made by both learned counsel for the parties, the issue that has to be resolved is whether the applicant has shown a good cause for this Court to exercise its discretion in granting an extension of time to file an appeal in this Court

The Court of Appeal of Tanzania in **Lyamuya Construction (Supra)** have established factors to be considered in application like this at hand where the Court was of the view that discretion to extend time is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. It formulated

five guidelines in which applicant should show in an application for extension of time. These guidelines are: -

- i. The applicant must account for all the period of delay.*
- ii. The delay should not be inordinate.*
- iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- iv. 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.*

From the above decision, and in consideration of this case at hand, this court has to consider and test if the applicant passes the test by showing a good or sufficient cause.

Having gone through the affidavit and the submission by the applicant I found that, the applicant has raised a ground that after the Chairman of the Tribunal was transferred before delivery of the Judgment, despite her tireless efforts to make a follow up of the date of judgment it was not ready for pronouncement. She became aware that the judgment was pronounced when she was served by the respondent with the application for extension of time to file bill of costs.

Therefore, in general the applicant has to state reasonable reasons that prevented him from taking action within the prescribed time limit. It was stated in **CRDB (1996) Limited Vs. George Kilindu, Civil Appeal No 162 of 2006 CAT (Unreported)** that:

"...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."

In determining the instant application that the applicant was not notified to the date of judgement. As the law stands, parties must be notified of the date of the decision. Failure to so do, contravenes the mandatory provisions of Order XX Rule 1 of the CPC, which provides that,

The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

As regard to the time spent by the applicant to make follow up of date of pronouncement of judgment, it was Mr. Masanja's contention and also under paragraph 5 of the affidavit that, they were tirelessly making follow ups on the date for judgement at the tribunal and all times were notified that the judgement was not ready for pronouncement. and even after being delivered they were not informed. As a result, they delayed to

be supplied with the copy of Judgement and decree as they were not notified to the date of pronouncement of judgement. I will produce here paragraph 6 of the applicant affidavit:

" THAT, the Applicant was surprised on the 28th April, 2023 to be served by the Respondent with an application for extension of time to file Bill of Costs out of time (Misc. Land Application No. 173 of 2023 between Godlove Hosea Nombo versus Elizabeth Jackson Biswaro (As Administrator of the Estate of the late Jackson Mwenda Biswaro) and in that application the Respondent stated he was availed with the copy of judgment on the 30th March, 2023, and the Judgment and Decree which was attached to the said application revealed that it was issued on the 12 December 2022, in the absence of the Applicant and the Respondent and there was no any summons or notice issued to the Applicant nor the Respondent on the date of pronouncement of the judgment, in short the Applicant was kept out of the court proceedings without any justifiable cause although she was making follow ups on the date of judgment pronouncement."

From the above paragraph as well as the submission made by applicant counsel for paragraph 5,6,7 of the affidavit.

Annexure EB2 annexed to the applicant affidavit is chamber summons and affidavit of the respondent herein for Misc. Application No. 173 of 2023 concerning application for extension of time for bill of cost. As per that affidavit under paragraph 3,4,5,6 the applicant, who is the

respondent herein was explain that he was making follow up of the judgement and decree of Application No. 223 of 2015 until 30 March 2023 when he was supplied with the copy of the same and further under paragraph 7 and 8 shows that even the respondent herein was not aware of the date of pronouncement of judgement.

As alluded earlier that the centre of controversy appears to be on the failure by the trial tribunal to notify parties on the date of the judgement. Basing on the fore mention, I concede with the applicant submission that none of them was aware of the date of pronouncement of the judgement.

From above since the applicant became aware on 28 April 2023 and this application was filed on 10 May 2023, only 12 days later, to my considered opinion the applicant acted diligently upon filing this application. The delay is not inordinate.

Consequently, I find the applicants' application for extension of time to be meritorious and proceed to allow the same.

In the upshot, the application is granted and the applicant shall file appeal within twenty-one (21) days from the date of delivery of this Ruling. Further, I order no costs.

It is so ordered.




K. D. MHINA
JUDGE
18/10/2023