

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO.626 OF 2023

(Arising from Land Application No. 519/2018)

FORTUNATUS JOSEPH DOSLAAPPLICANT

VERSUS

LETICIA FORTUNATUS.....1STRESPONDENT

MARTHA ABISAI MGAWANYI..... 2ND RESPONDENT

JUMA MAKAUNI3RD RESPONDENT

RULING

Date of last order: 31st October 2023

Date of Ruling: 3rd November 2023

MWAIPOPO, J

This is an application for extension of time filed by Fortunatus Joseph Dosla hereinafter to be referred to as the applicant versus Leticia Fortunatus, Martha Abisai Mgawanyi and Juma Makauni hereinafter to be referred to as the first, second and third Respondents or Respondents collectively. The Application is made under section 41(2) and 52 (2) of the Land Disputes Courts Act Cap 216 R.E 2019 and Section 19(2) of the Law of Limitation Act Cap 89 R.E 2019. The Application, which is in the form of Chamber Summons supported by an Affidavit, seeks leave of this Court to extend time within which to allow the Applicant to file an appeal out of time against the Decision of the Hon. Chairman R. Mwakibuje, in Land Application No. 519 of 2018 between Fortunato's Joseph Dosla, the Applicant and Leticia Fortunatus,

Martha Abisai Mgawanyi and Juma Makauna, the Respondents, delivered on the 21st of July 2023 and any other orders this Court may deem fit to grant. The same is supported by an Affidavit of Fortunus Joseph Dosla sworn on 21st day of September 2023 and filed on the 22nd September 2023. In opposing the Application, the first, second and third Respondents herein filed Counter Affidavits sworn in on 17th of September 2023 and 5th October 2023 respectively.

During the hearing of the application, the applicants enjoyed the services of the learned Advocate, Emmanuel Saghan whereas the Respondents were represented by the learned Advocate Alphonse Katemo.

In his oral submissions, the Counsel for the applicant prayed for the Court to adopt the contents of the Affidavit sworn in by the Applicant in support of the Application. He went further to submit that the Application has been brought under section 41(2) and 52(2) of the Land Disputes Court Act Cap 216 RE 2019 and section 19(2) of the Law of Limitation Act Cap 89 RE 2019.

With regard to the enabling provisions cited in the Chamber Application, the Counsel for the Applicant stated that section 41(2) of the Land Disputes Act, has been cited to imply that an appeal from the DLHT to this Court is required to be made within 45 days of the delivery of the decision. However, the High Court has powers to extend the time when good cause is shown. He went on to submit that section 52(2) of the Land Disputes Court Act Cap 216 RE 2019 is relevant in the Application for purposes of bringing

into play, an application of section 19(2) of the Law of Limitation Act Cap 89 RE 2019 in the present Application, which is relevant when it comes to computation of exclusion of time spent by the Applicant in searching for the copies of Judgment, proceedings and Decree.

On the reasons for extension of time, the Counsel submitted that, the Judgement, which the Applicant seeks to challenge, was delivered on the **21st of July 2023**. However, it was obtained by the Applicant on the **18th of August 2023**. During this period between the delivery of the Judgement i.e. 21st July 2023 and 18th August 2023 when copies of the Judgement and Decree (Annexure FJD4 to the Affidavit, para 5) were issued to the Applicant, such a period has to be excluded in computation of time as per section 19(2) of the Law of Limitation Act. With regard to the stated periods, the Counsel also stated that such periods have not been disputed in all the Counter Affidavits of the Respondents. The Counsel submitted further that his Client, the Applicant, has been diligent in making follow ups to obtain records (See para 9 and 10 of the Affidavit) citing annexure FJD5, which is a letter requesting for copies of Judgment, Proceedings and Decree. These contents, he submitted, are also not disputed in the Counter Affidavits of all the respondents. He asserted further that, counting from 18th August 2023, which is a date when the records were obtained to 22nd September 2023, when the application was filed, the Court may find that the Applicant filed this application within 34 days, which is well within the period of filing an appeal. However, he adumbrated further that, according to section 41(2)

of the Land Disputes Courts Act, the Applicant has preferred this application way before the expiration of the time for filing an appeal in understanding that the exclusion of days may not be automatic in the appellate court. He thus filed this application in order to be safe. The Counsel landed his first round of oral submissions by humbly praying to the Court to grant the prayers sought in the Chamber summons and allow the applicant to file his appeal out of time and also in understanding of the fact that reasons for extension of time have not been disputed under paragraph 6 of all the Counter affidavits of the Respondents herein.

In reply, the Counsel for the Respondents took off by affirming the position that the Respondents have objected to this Application by filing Counter Affidavits. He however, proceeded albeit differently by taking no issue with the law or rather enabling provisions cited by the Counsel for the applicant regarding the procedure for filing appeals and the extension of time thereto under section 45 of the Land Disputes Court Act Cap 216 RE 2019. He was however again quickly to allude that; the cited law does not set any requirement for attaching a copy of the Judgment from the Land Tribunal even though he acknowledged that such a document is important in the preparation of the appeal.

Submitting in rebuttal on the reasons for extension of time and the trend of events or steps taken by the Applicant in obtaining the records, the Counsel for the Respondents stated that the Applicant obtained a copy of the Judgment from the trial Tribunal on the

18th of August 2023 and that based on the timeframe, he was still supposed to file his appeal on **22nd of September 2023**. However, instead of filing an appeal, the Applicant filed an application for extension of time on 22nd September 2023, which was again more than 30 days since he was availed with the records. He contended further that despite this delay, there is no single paragraph of the Applicant's Affidavit accounting for each day of delay from the day he was availed with the records to the date he filed the application for extension of time. He asserted further that; the un explained delay is very fatal to the application because it constitutes the crucial time the Applicant was supposed to account and justify the days spent without taking any action. He submitted that; extension of time depends on sufficient cause adduced by the applicant and since the Applicant has failed to justify the lapse of the period from 18th August 2023 to 22nd September 2023, he has thus failed to adduce sufficient cause.

With regard to the argument by the Counsel for the applicant that, paragraph 6 of the Counter affidavits of all the Respondents, has not objected to any of the reasons for extension of time cited by the Applicant, the Counsel for the respondent in his oral submissions, objected to the contention stating that the said paragraph 6 does not support the reasons for the extension of time as contended by the Counsel for the Applicant but rather it notes the fact that the Applicant was availed with the copies of the records on such a date. The paragraph does not constitute an admission of the application at all. He further clarified that the Respondents in paragraph 6 of their Counter affidavit were only

noting the contents of Paragraph 7,8,9 and 10 of the Applicant's affidavit. He therefore wound up his reply to the submissions in chief by convincing the Court to find, without hesitation, that the application for extension of time lacks merit to warrant extension of time and it should be dismissed with costs to the applicant.

In his rejoinder, the Counsel for the Applicant began his submissions by first expressing his appreciation to the Counsel for the Respondents for agreeing with the enabling provisions cited in the Chamber Application for being the correct ones and relevant in giving power to the Court to grant the orders sought in the Chamber Summons. Secondly, he expressed his appreciation to the fact that the Counsel for the Respondents acknowledged in his submissions that the Judgment is a compulsory document and an important tool for any one who intends to appeal against any impugned decision. This is because, he stated, the reasons or grounds of appeal are extracted from the Judgment. It was thus imperative for the Applicant to obtain a copy before filing his appeal. Thirdly, he reiterated the fact that the applicant never slumbered, he made necessary steps in obtaining a copy of the Judgement, which was availed to him on the 18th of august 2023. He emphasized the fact that the period for obtaining the records is always excluded as per section 19(2) of the Law of Limitation Act Cap 89 RE 2019. He denied the fact that there has not been any lapse of more than 30 days as contended by the Applicant before filing an application for extension of time, since the period used to obtain copies of Judgment should always be excluded i.e. he cited 18th of August 2023 to 22nd of September 2023. He therefore

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objected to the need to account for each delay because the application is not late. Fourthly, he noted the fact that exclusion of days is not automatic that's why the Applicant preferred this application. Fifthly, contrary to what the Counsel for the respondent stated, he reiterated the fact the applicant has adduced sufficient reasons for delay under paragraph 8, 9, 10, 11 and 12 of the Affidavit and lastly, with regard to admission under paragraph 6 of the Counter affidavits, he barred the counsel for the Respondent to explain matters which were not in his position to explain, since they were taken on oath and would amount to submissions from the Bar. It was his submission, that the Deponents are the ones to clarify and explain. In conclusion he prayed for the Court to grant the prayers in the Chamber summons and costs to follow the event.

Having carefully gone through the rival submissions of the learned minds, I am now inclined to address the issue as to whether the applicant has demonstrated sufficient cause to warrant this Court to grant extension of time to enable him file his appeal out of time. In addressing this issue I am first and foremost guided by the case of **Benedict vs. Consolidated Holdings Corporation as an Official Receiver of Tanzania Film Company Limited, Civil application No. 366/01/2017, CAT**, which has developed some guidance and criteria on what amounts to good cause to enable courts in the exercise of its discretion. It states and I quote;

"...the Court must consider factors such as the lengthy of delay, the degree of prejudice the respondents stand to suffer if time is extended, whether the applicant was diligent, whether there is a point of law of sufficient importance such as illegality of the decision sought to be challenged and the overall importance of complying with prescribed timelines".

Indeed, based on the cited case above, I agree that extension of time should only be granted when sufficient reason or good cause has been advanced to the satisfaction of the court. This can always be assessed based on the circumstances and facts of each case. Through this assessment the Court is always obliged to determine whether the applicant has advanced good cause before granting extension of time. In the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustees of Young women 's Christian Association of Tanzania, Civil Application No. 2 of 2010, CAT Arusha**, the Court of Appeal formulated some guidelines for consideration by Courts before granting extension of time. The Court enumerated the following four guidelines;

- a) The applicant must account for all the 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 intends to take**

d) Other sufficient reasons such as the existence of a point of law of sufficient importance such the illegality of the decision sought to be challenged.

Reverting back to the application at hand, the Judgement now sought to be challenged was delivered on **21st of July 2023** against the Applicant or in favour of the Respondents. The Applicant then applied for copies of proceedings on **31st July 2023** after the decision was given. The Court then supplied the applicant with certified copies of the Judgement and Decree on **18th August 2023**, after a lapse of 19 days out of 45 days of lodging an appeal. (Refer to Para 8,9, and 10 of the Affidavit of the applicant. Further, according to the Application, the Applicant then filed this application for extension of time on the **22nd day of September 2023** after swearing in before the Commissioner for oath on the 21st of September 2023.

In his submissions, the counsel for the Applicant contended that this period of time between 31st of July 2023 when the applicant applied for records, 18th of August 2023 when the records were obtained and 22nd September 2023 when the Applicant filed an Application for extension of time should be excluded in computation of time as per section 19(2) of the Law of Limitation Act Cap 89. The Counsel for the Respondents has objected this position as analyzed hereinabove.

Reckoning from the trend of events it is clear that the Applicant received the records on the 18th of August 2023 which was a 19th day after his request was placed before the Court to be supplied

with records. Meaning that by the time he received the certified copies on the 18th of August 2023, he still had 26 days out of 45 days within which he could lodge his appeal on time. However, as seen from the record and his submissions, instead of filing his appeal immediately, the Applicant under the services of his Advocate filed his application for extension of time on the 22nd day of September 2023 which was a 36th day out of 45 days of preferring his appeal. The statutory days of preferring an appeal were to lapse on the 2nd of October 2023.

As correctly submitted by the Counsel for the Respondents during his oral submissions before the Court, neither the Applicant nor his Counsel have accounted for the period of inaction or delay in filing an appeal immediately after 18th of August 2023 when they were supplied with the records and when the Applicant still had 26 ample days up to 2nd of October 2023 to do the same. Indeed, this is a clear manifestation of a litigant or an aggrieved person who just decided for no good reasons to slumber on his right. If I may borrow words of Honourable Justice Kitusi in the case of *Hajibhai Kara Ibrahim Versus Mrs Zubeda Ahmed Lakha and others Civil Application No. 573/11/of 2022 Tabora*; where he asked and I quote; **After all, is it not a settled principle that the law tends to assist those who are vigilant?** Indeed, the law assists those who are vigilant and not those who sleep. (See also **Nyanza Road Works Limited v Giovan Goidon Civil Appeal No. 75 of 2020 Unreported.**

In his submissions, the counsel for the Applicant stated that the Respondents in their Counter Affidavits have not objected to this sequence of events of the Applicant in obtaining the records. I have examined the contents of the Counter Affidavits and noted that the Respondents only noted the contents of the facts narrated by applicants regarding the sequence of events but they never admitted the Application as correctly stated by Counsel for the Respondents. Similarly, I agree with the counsel for the Respondents that, the Affidavit of the Applicant apart from narrating the sequence of events in obtaining records and the delay to be supplied with records, does not account for each day of delay at least from 18th of August 2023 when the Applicant was availed with the records. I, in the first place I agree with the counsel for the respondents that the Applicant never accounted for each day of delay.

Secondly, I disagree with the counsel for the applicant that the certified copies were delayed since they were supplied on the 19th day of their request way back on 18th August 2023. Meaning that they still had 26 days within which the Applicant could file his appeal within time. Since the Applicant did not account for each day of not filing the appeal from 18th of August 2023, he can not come to this court at this juncture in order to secure an extension of time in a situation where he still had ample time to do so but he never did. He is and was duty bound during hearing to state sufficient reasons for not filing the intended appeal and instead he opted to take another route of filing an application for extension of time under the pretext that he needed assurance of

automatic exclusion of the days he spent in obtaining the records and the days he wasted on his own fault.

With due respect I state that the learned Counsel misconceived the concept of exclusion of days.

Indeed, as correctly submitted by the Counsel for the applicant, Section 52(2) of the Land Disputes Court Act Cap 216 2019 brings the application of the Law of Limitation Act Cap 89 into the proceedings of the Court. According to section 19(2) of the Law of Limitation Act, Cap 89 RE 2019 the exclusion of time is automatic. **See also the case of Mohamed Salimini Vs Jumanne Omary Mapesa , Civil appeal No. 345/2018 (Unreported)** where the court of Appeal affirmed that section 19(2) of the Law of Limitation Act obliges courts to exclude the period requisite for obtaining such records. I am thus of the view that the period between 31st July 2023 to 18th August 2023 is or was automatically excluded for purposes of filing an appeal as per section 19(2) of the Law of Limitation Act Cap 89 RE 2019. The Applicant was not obliged in any way whatsoever to come to court to get a certification of exclusion of time in a situation where he was clearly within the 45 days of appealing to the High Court.

As aptly demonstrated by the Counsel for the Respondents, I am inclined to agree that the applicant was not diligent in taking proper steps towards filing his appeal since the date when he was availed with the copies i.e. 18th of August 2023 till the date when 45 days of filing an appeal lapsed on the 2nd of October 2023. Failure to take essential steps in filing his appeal amounts to

apathy, negligence or sloppiness in the prosecution or institution of his own appeal. (See the case of **Renatus Nsangano and two others Versus Selestine Mlela Shayo, Misc. Land application No. 23/2023, HCT Mwanza, Benedict vs Consolidated Holdings Corporation as Official Receiver of Tanzania Film Company Limited, Civil application No. 366/01/2017, CAT**)

It is a settled principle of law that, for the court to grant extension of time, the applicant must advance sufficient reason or good cause for delay. In the case of **Benedict Mumelo Vs Bank of Tanzania, Civil Appeal No. 12/2012 the Court of Appeal** held that;

“ It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient reason”.

In this case I find that the applicant has failed to demonstrate seriousness in taking steps towards filing his appeal within time and has failed to adduce good reasons for failure to take essential steps to file his appeal between 18th of August 2023 to 2nd of October 2023. The Applicant decided to slumber on his right to file an appeal within time. He cannot be allowed by this Court to divert and file an application for extension of time prematurely in a

situation where he was supposed to file an appeal and he decided not to file it and let time lapse on itself.

In the upshot, i proceed to dismiss the application for extension of time for being misconceived and devoid of merit. The Applicant should pay costs of this application.

It is so ordered.

DATED at DAR ES SALAAM this 6th day of November, 2023.

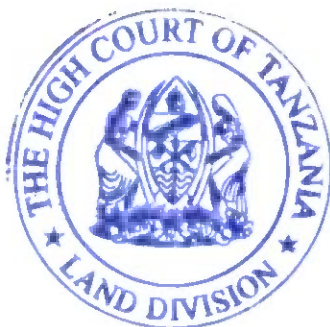


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S.D. MWAIPOPO

JUDGE

06/11/2023

The ruling delivered this 6th day of November, 2023 in the presence of Advocate Sixbert Ngomera, holding brief for Advocate Saghan for the Applicant and Advocate Alphonse Katembo for the Respondents, is hereby certified as a true copy of the original.



Mwaiipo
S.D. MWAIPOPO

JUDGE

06/11/2023