

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

MISC. LAND APPLICATION NO. 664 OF 2022

ALLEN JUMA KASINDE.....APPLICANT

VERSUS

BUPE LAURENCE MWAKATENYA.....RESPONDENT

R U L I N G

Date of last Order: 12/12/2022

Date of Ruling: 03/02/2023

K. D. MHINA, J.

This is an application for extension of time within which the applicant herein can lodge an appeal to this Court against the decision of the District Land and Housing Tribunal ("the DLHT") for Kinondoni in Land Appeal No. 87 of 2020. The application has been preferred under Section 38 (1) of the Land Disputes' Courts Act No.2, Cap 216 R: E 2019 ("the LDCA")

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

A brief background is significant to appreciate what prompted the filing of this application. It started at the Ward Tribunal of

Mwananyamala in Application No. 17 of 2016, where the Ward Tribunal entered an ex-parte judgment against the applicant.

The applicant approached the Ward Tribunal to set aside the ex-parte judgment, but his application was dismissed.

Aggrieved, the applicant appealed to the DLHT for Kinondoni in Land Appeal No. 87 of 2020. The Tribunal, in its decision dated 16 November 2021, dismissed the appeal for want of merits.

Undaunted, the applicant approached this Court by appeal vide Land Appeal No. 17 of 2022. On 4 October 2022, the appeal was struck out for being incompetent before this Court. Hence this application.

At the hearing, the applicant was represented by Mr. Sunday Msomi, learned counsel, while the respondent by Mr. Joseph Mbogela, also a learned counsel.

Briefly, submitting in support of the application, Mr. Msomi argued that before filing this application, there was an appeal No.17 of 2022, filed within time but struck out on 4 October 2022.

He further stated that this application was filed on 24 October 2022. He said that from 4-19 October, the applicant was waiting to be

supplied with a copy of the decision of the previous appeal, which was struck out.

He cited **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young Women's Association of Tanzania**, Civil Application No.2 of 2010 (unreported) at pages 6-7, where the Court formulated the grounds to consider in extending time as;

- (a) The applicant must account for all 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 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.*

Mr. Msomi submitted that the application is within the threshold provided in the cited case.

Further, he submitted that a technical delay occurred because the applicant was waiting for a copy of the decision. To substantiate his submission, he cited **Fortunatus Masha vs. William Shija and another (1997) TLR 154**, where the Court of Appeal held that an extension should be granted in case of technical delay.

Mr. Msomi also, in his submission, argued that there is a ground of illegality because the Tribunal did not consider the grounds of appeal raised before it.

In conclusion, he prayed for the application to be granted as the applicant diligently lodged the appeal.

In response, Mr. Mbogela resisted the application and submitted that the counsel for the applicant did not submit anything on what happened after the decision of the Tribunal. He only submitted on the scenario after the Appeal was struck out.

Further, the counsel failed to explain how technical hindrances caused the delay.

On the issue of illegality, he submitted that the counsel for the applicant failed to explain how the decision of the Tribunal was tainted with illegalities.

He further submitted that the applicant lodged the improper appeal, which was struck out. Therefore, the negligence of an advocate cannot constitute reasons for an extension of time as it was held in **Jubilee Insurance Co. (T) Ltd vs. Mohamed Sameer Khan**, Civil Application No. 439/01 of 2020 (Tanzlii). The reason for the striking out was the negligence or ignorance of the counsel for the applicant.

He concluded by submitting that the cited case of **Fortunatus Masha (Supra)** is distinguishable because, in the application at hand, there was ignorance of the counsel. Further, as per the cited case of **Lyamuya Construction (Supra)**, in this application, the applicant failed to account for each day of delay.

In a brief rejoinder, Mr. Msomi reiterated what he submitted earlier that they were waiting for the proceeding to file this application, and in the affidavit, it was indicated how technical hindrance caused the delay.

He further submitted that there was no negligence on part of the advocate and the cited case of **Jubilee Insurance (Supra)** does not suit the circumstances of the application at hand because, in this matter, the previous appeal, which was struck out, was filed within time.

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 stressed this in **Sebastian Ndaula vs. Grace Rwamafa (Legal Personal Representative of Joshua Rwamafa)**, Civil Application No. 4 of 2014 (Unreported), where the Court put it succinctly that in an application for extension of time, good cause to extend must be shown.

As to what may constitute a good cause, again, the Court of Appeal in **Hamis Babu Ally vs. The Judicial Officers Ethics Committee**

and three others, Civil Application No 130/01 of 2020 (TanZlii),

pointed out the following factors: -

- (a) To account for all 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 he intends to take and*
- (d) The existence of a point of law of sufficient importance, such as the illegality of the decision sought to be appealed against.*

In the application at hand, as I indicated earlier, the applicant has raised two grounds for seeking an extension: -

One; technical delay because the previous appeal was struck out

Two, illegality in the impugned Tribunal decision.

In deliberation and determining the application at hand in respect of the first ground, I will divide the period of delay into two phases;

The first period between the filing of the previous appeal up to 4 October 2022, when the appeal was struck out, and the second, from 4

October 2022, when the appeal was struck out, up to 24 October 2022, when this application was filed.

There is no dispute that the previous appeal (Appeal No. 17 of 2022) was filed within time. The question is, what is the implication of the appeal which was struck out versus the delay in filing this application?

To answer this, first, it should be noted that this is not a new phenomenon in our jurisdiction, as the Court of Appeal has already put it succinctly in several cases such as **Bharya Engineering and Construction Ltd vs. Hamoud Ahmed Nassor**, Civil Application No. 342/01 of 2017, where it was held that the prosecution of an incompetent appeal when made in good faith and without negligence, ipso facto constitutes sufficient cause for extension of time and delay arising from the prosecution of that appeal was not actual, it is a mere technical delay. This also answered the submission by Mr. Mbogela that the counsel for the applicant should have accounted for the period before the previous appeal was struck out.

Therefore, the period between the institution of the previous appeal and 4 October 2022, when the same was struck out, has been justified that the same is a technical delay.

The next issue is whether the applicant took the necessary steps promptly in filing this application.

In his submission, the counsel for the applicant stated that they were supplied with the documents of the struck-out appeal on 19 October 2022, a fact which was not countered by the counsel for the respondent. Even the copy of the judgment indicated that it was supplied to the parties on 19 October 2022.

Therefore, from 4- 24 October, the difference is 20 days, of which 15 days was a period waiting to be supplied with the court's decision, which struck out the appeal.

In **Emmanuel Rurihafi and another vs. Janas Mrema**, Civil Appeal No. 314 of 2019 (Tanzlii), the Court held that the test to determine promptness is a question of fact which has to be decided on a case-by-case basis. The Court found that 22 days was a reasonable time for collecting copies of the ruling and drawn order in the struck-

out appeal and preparing a meaningful application for an extension of time.

In the case of **Emmanuel Rurihafi** (Supra), the Court of Appeal quoted its other decisions with a similar issue. Those cases are; **Samwell Mussa Ng'omango (as a legal representative of the Estate of the late Masumbuko Mussa) vs. A.I.C (T) Ufundi**, Civil Appeal No.26 of 2015 (unreported), where a single justice of appeal considered the circumstances of the case and observed that the applicant acted promptly for filing an application in less than 20 days after obtaining the certificate. Another case is of **Hamis Mohamed (as the Administrator of the Estate of the late Risasi Ngwale) vs. Mtumwa Moshi (as the Administrator of the Estate of the late Risasi Ngwale)**, Civil Application No. 407/17 of 2019, where also a single justice of appeal observed that a period of less than 30 days is a reasonable time.

Flowing from above, in the circumstances of this matter, 20 days, of which 15 days the applicant was waiting to be supplied with the court's decision, is a reasonable time to justify an extension of time. The

facts indicate that the applicant acted promptly, and there was no inordinate delay.

Consequently, it behooves to find that the applicant advanced a good and sufficient cause to warrant this court to exercise its discretion in granting an extension of time.

From above this ground alone suffices to dispose of the application, therefore; I see no need to deliberate and determine the question of illegality as it will not change the “destiny” of this application.

In the foregoing, therefore, I grant the application. It is further ordered that the applicant shall lodge his appeal to this Court within fourteen (14) days of the date of delivery of this Ruling.

It is so ordered.

DATED at DAR ES SALAAM this 03/02/2023.




K. D. MHINA
JUDGE