

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

MISC. LAND APPLICATION NO. 26314 OF 2023.
*(Arising from Application No.156 of 2022 at the District Land and Housing
Tribunal for Kinondoni at Mwananyamala)*

**ANNA PETRO HIITI (An Administratrix of the Estate of The
Late John George Mrope)..... APPLICANT**

VERSUS

PAULINA JOHN GEORGE MROPE.....RESPONDENT

RULING.

Date of last order: 09/02/2024

Date of Ruling:16/02/2024.

S.D MWAIPOPO, J

This is an application for extension of time within which to file an appeal out of time. The application is made under section 41 (2) of the Land Dispute Courts Act Cap 216 [R.E 2019] and any other enabling provisions of law. The applicant seeks for extension of time within which the applicant shall present her appeal out of time against the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala on Land Application No.156 of 2022 dated 29th day of August 2023. In her Chamber Application, the Applicant is praying for the following prayers;

a) This Honourable court be pleased to order extension of time for which the Applicant shall present her appeal against the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala on Land case No. 156/2022 dated 29th day of August 2023 out of time

b) Costs to be provided for

The application is supported by an affidavit of ANNA PETRO HIITI an Administratrix of the estate of the late John George Mrope the, Applicant and opposed by Counter Affidavit sworn by PAULINA GEORGE MROPE the Respondent. On 09th February 2024, when the matter came for hearing both the applicant and Respondent appeared in person and fended for themselves. The Application was argued orally following consent of both parties.

Arguing in support of the application, the Applicant began by praying for her Affidavit to be adopted to form part of her submissions. She submitted that her application relates to probate issues related to the estate of her deceased husband as per the Minutes of the Clan/Family attached. According to paragraph 11 of her Affidavit, the land which was in dispute at the DLHT relates to probate cause no 156/2011 at Kawe Primary

Court waiting for filing of Inventory and the disputed property is among the properties to be accounted for.

She stated that she is praying for extension of time because she needs to appeal against the decision of the DLHT for Kinondoni at Mwananyamala which was delivered in favour of the Respondent on the 11th day of October 2023 the same date after the delivery of the judgment she wrote a letter to obtain a copy of the Judgment and on the 1st day of November she went to the Tribunal to collect the same whereby the Clerk at the Tribunal threw it on the table. The said copy showed that the judgment was delivered on the on 29th August 2023. Instead of the correct date of delivery i.e. 11th October 2023. On 11th & 18th of November 2023, she wrote letters to the Tribunal to request for a proper copy of the decision since she noted that the 29th August 2023 was not a correct date of the Judgment delivery but that the correct date of the decision was 11/10/2023. She further submitted that thereafter, the Tribunal did not respond to her letters and it kept on telling her to follow up on the next subsequent days. Then finally she was supplied with a copy on 31st of October 2023 bearing the same date of 29th of August 2023 and filed this application before this Court on 28th November 2023, with the assistance of an advocate or after obtaining an assistance from the Advocate.

She finally prayed for her application to be allowed so that she can finish the probate matter since they have divided all the properties except the deceased farm located at Magereza Dar es salaam, so that her kids can be in peace. She further requested for a stop order to protect the farm because there are ongoing issues in Court. With regard to issue of Costs, she begged to adopt what is in her application.

Submitting in rebuttal was Ms. Paulina George Mrope the respondent, who is the deceased child from another wife. She also began by praying to adopt her Counter Affidavit as part of her submissions in Court. She contended that the Applicant is her late father's 4th wife. She objects to the submissions made for extension of time since contrary to what has been submitted by the Applicant, the decision was given on 11/10/2023 and not 29th of August 2023 and the Chairman signed the document on 31/10/2023. That on the date for the delivery of the Judgment, the Applicant requested to be given a copy of the proceedings, she submitted further that, since the copy was signed and issued on 31/10/2023 she didn't understand as to why she could not appeal on time. Until 8/11/2023, when she was requesting for corrections on the judgement date, It was her submission that, she was still within time since an appeal is supposed to be filed within 45 days from the date of judgement.

The Respondent further contended that she has not seen any merit in her application, because on 17th November 2024 the Applicant went to the office of DC Kinondoni to submit complaints against her in which they were summoned to appear on 22nd November 2023. It was her submission that instead of the Applicant taking the route of complaining to the DC's Office, she was supposed to look for an advocate to help her pursue the intended appeal before this Court. She thus wasted time going to the DC's Office. She reiterated her submissions that the Copy of the judgment was correct since on 29/8/2023 the Hon. Chairman was supposed to read the judgment, however, he adjourned it till 11/10/2023. Therefore, she submitted that the Applicant was within time at the time she filed this Application, it is not like the Tribunal neglected her so that she could not appeal. Nevertheless, she prayed for this Court to proceed with the Applicant's Application despite her submissions. She stated that she did not have any objection with the Applicant being allowed to file her intended Appeal or be allowed extension of time to file her appeal. She wants this Court to show her that there is justice and that the Tribunal was fair in whatever that was reached.

The Respondent also finalized her submissions by giving a brief background of the disputed Farm located at Magereza Dar es salaam in which she contended that it was her personal property given by her late

Father as a gift *intervivos*. However, since those issues touch on the merit or subject matter of the appeal/dispute I will not labour much on them and instead will focus on the instant Application for extension of time.

In rejoinder, the Applicant reiterated her submissions in chief.

Having heard the submissions of the parties, I now proceed to determine the merit of this Application for extension of time the main issue being whether it has merit. Even though I have taken note of the fact that the Respondent in her conclusion did not object to the Application, it is still the duty of this Court to satisfy itself on the submissions made, so as to ensure that just and fair decisions are rendered by the court.

It is a trite principle of law that grant of extension of time is entirely upon Court's discretion, which however should be exercised judiciously. Moreover the grant is not automatic since the party has to satisfy the Court that he or she has genuine grounds and sufficient reasons for the Court to exercise its discretion and grant extension of time as it was held in the case of **Benedict Mumello vs Bank of Tanzania Civil Appeal no 12 /2012**, See also the case of **Anthony Tluway and another vs lea Ama Lulu(Administrator of the estate of late veronica Amnaay), Misc Land Application no. 85/2022, HCT , Arusha** . Similarly, there is no statutory definition of what amounts to good cause in extending time. The Court may look at various of reasons

such as the duration of delay, whether delay is inordinate, whether the applicant has accounted for the delay, whether the applicant has demonstrated diligence and not apathy, negligence or sloppiness in the prosecution of the matter action she intends to take or whether there exist a point of law of sufficient importance such as illegality of the decision sought to be challenged (See the case of **Lyamuya construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Appeal No. 2 of 2010, Attorney General Vs Tanzania Ports Authority and another Civil Application no 87 of 2016 CAT, and Ramadhani Kihwani vs TAZARA Civil Application no 401/18 of 2018.**

In the Application at hand, the Applicant in her Affidavit and submissions has stated that she delayed to get a copy of the Judgment that bears the correct date of delivery. The one she was given is dated 29th of August 2023 while the correct date for Judgement was 11th of October 2023. She was supplied with the said copy on 31st of October 2023 bearing the same date of 29th August 2023 and filed this Application on 28th November 2023. The Tribunal has refused to provide her with the new copy of the Judgment with a correct date.

The Respondent on her part has also maintained that the Judgment was delivered on 11th of October 2023 and not 29th of August 2023 as the said date changed when the case was adjourned to 11th of October 2023. She also stated that the Applicant was still within time when she filed this Application. She finally concluded that she was not objecting to the Application at hand, as she wants this Court to show the Applicant that the District Land and Housing Tribunal indeed did justice to the trial case. I have perused the records contained in the file and noted that there is a copy of the Judgement of the Tribunal (annex A1) given to the Applicant showing that the decision was delivered on 29th of August 2023 and the said copy was supplied to the Applicant on 31st of October 2023. I have also satisfied myself that the Applicant on two occasions, 11th of October 2023 and 8th of November 2023 wrote to the Tribunal to request for a proper copy of the judgment, which was delivered on 11th of October 2023 and not 29th of August 2023, (**See Annex A2 and A 3**). Further I have also observed that the said copy has never been supplied to the Applicant to date and what is available is the one dated 29th of August 2023. This date on the judgment has also been confirmed by the Respondent to be not the correct date of Judgment delivery since on the said date the Tribunal adjourned the matter to another date for judgment, i.e. 11th of October 2023. Therefore, based on submissions from both parties, it is



not in dispute that the correct date of the judgment is 11th day of October 2023 and not 29th day of August 2023. Also, it is not in dispute that the copy was ready for collection on 31st October 2023 as the attached copy reveals that the copy was issued on 31st of October 2023. Since the copy of the judgment was ready for collection on 31st day of October 2023, it is my position that, that is the day we are supposed to start counting whether there have been delays or not on the part of the Applicant. When one counts from that date, i.e. 31st of October 2023 to 28th day of November 2023 when the present application was filed, the applicant was within time as it was almost 28 days only since time started to run. However, if one counts days till the date of hearing of the present Application, one will note that the Applicant is out of time to file her appeal since it is beyond 45 days stipulated under section 41(2) of the Lands Disputes Court Act Cap 216 RE 2019.

Therefore, based on the fact that she has been genuinely pursuing the matter by asking for the correct dated copy of Judgement and also proceeding to look for an advocate to assist with preparation of her Application which she was able to file it on 28th of November 2023 with the copy that she was availed with by the Tribunal, it shows that , being a lay person she was not negligent or sloppy in her actions as she was

still able to pursue the action she intended to take diligently and faithfully
(See Lyamuya's case (supra)).

Moreover, since she was still within time when she filed this matter, I hereby exclude the days when the Applicant was prosecuting this case in accordance with Section 21 (2) of the Law of Limitation Act Cap 89 [R.E 2019]. For avoidance of doubt the said Section reads;

In computing the period of limitation prescribed for any suit, the time during which the civil proceeding, whether in a court of first instance or a court of appeal , against the same party, for the same relief, shall be excluded where such proceeding is prosecuted in good faith in a court which , from defect of jurisdiction or other causes of a like nature, is incompetent to entertain it.

In interpreting the said section this very court in the case of **North Mara Gold Mine Limited vs John Milindi Makoko Labour Revision No. 17 of 2023, Musoma**, citing with approval the case of **Geita Gold Mining Limited vs. Anthony Karangwa, Civil Appeal No. 42/2020** stated that;

It goes without saying that section 21(2) of the Law of Limitation Act does not require a party who intends to rely

on it to move the court by way of application for extension of time before he can have the time spent in prosecuting another proceedings against the same party excluded when computing the period of limitation. That is the law which, though not fixed is well settledwe have no reason to disturb it.

In the upshot I proceed to grant the application. The applicant to file her appeal within 30 days from today. Each party to bear her own costs.

It is so ordered



S.D. MWAIPOPO
JUDGE
16/02/2024



The Ruling delivered this 16th day of February, 2024 in the presence of Anna Petro Hiiti (Administratrix of the Estate of the Late John George Mrope) the applicant and Paulina John George Mrope the respondent, is hereby certified as a true copy of the original.



S.D. MWAIPOPO
JUDGE
16/02/2023

