

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

MISC. LAND APPLICATION NO 3 OF 2023

(Arising from Land appeal no. 86 of 2019, DLHT Kilosa)

RAMADHANI RASHIDI KITIME APPLICANT

VERSUS

ANNA ALLY SENYANGWA RESPONDENT

RULING

Date of last order: 07/02/2023

Date of Ruling: 10/03/2023

MALATA, J

This ruling is in respect to application for extension of time within which to lodge an appeal out time against a decision in Land appeal no. 86 of 2019, for Kilosa District Land and Housing Tribunal (DLHT). The Application is brought under section 14(1) of the Law of Limitation Act [Cap 89 RE 2019] and supported by the applicant's affidavit.

On 07/02/2023 this application came for hearing, both parties appeared in person (unrepresented).

In support of application, the applicant informed the court that, he had nothing more to submit but prayed the court to consider what is contained in the application and affidavit, thus grant the sought prayers.

In reply thereto, the respondent made similar submission to the court that, what she wanted to submit is already reflected in the counter affidavit thus asked the court to consider the same and reject the application for want of good cause. By way of rejoinder the applicant had nothing to add. This court was therefore left with a duty to go through the affidavit and consider the reasons for delay and whether the applicant had raised a good cause for extension of time.

The applicant's affidavit in particular paragraphs 2 to 5 echoes that and provide for reasons for delay that;

*2. That I hired an advocate to deal with the case and I travelled to Lindi because I was appointed as the public servant, but from that time and without justifiable reason, **an advocate failed to communicate with me and he didn't give me feedback of all the progress of that appeal case.***

*3. That it was not our intention to be out of time but **due to firm which offered us a legal representation failed to take action** immediately after the decision of the appeal that is why we become out of time.*

*4. That **we are layman who lacks enough knowledge** about this kind of application that is why we fail to brought an application and competent soon after decision of District Land and Housing Tribunal.*

5. That all the decision from Ward Tribunal and District Land and Housing Tribunal carries **legal contradiction and illegalities** which need more and intensive interpretation of Law.

The issue for determination is whether the applicant has advanced good or sufficient cause for the delay.

To start with, it is a settled principle of law that, for an application for extension of time to be granted the applicant must advance good cause for the delay. He also has duty to account for each day of delay. This position is echoed by section 14(1) of the Law of Limitation Act, Cap 89, R.E 2019 which provides that,

*14.-(1) Notwithstanding the provisions of this Act, **the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.***

Extension of time is granted in the exercise of court's discretionary and must be exercised judiciously depending on the circumstances of each case subject to the good or sufficient cause given by the applicant.

The above position is supported by numerous courts' decisions, to cite just a few; in **Kalunga and Company Advocates v. National Bank of Commerce** [2006] TLR 235, **Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd**, Civil Application No. 13 of 2010, in the case of **Osward Mwizarubi** (supra) the court stated that;

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion."

In the instant application the circumstances leading to the delay are clearly stated in paragraphs 2 up to 5 of the affidavits supporting the application. Essentially, the applicant has stated that, **one**, he was unable to lodge the appeal because the advocate with instruction without justifiable reasons failed to communicate with him and he didn't give him the feedback of the progress of the appeal. The firm representing him failed to take immediately action after the decision. However, there is no affidavit from the firm proving existence of such fact, thus remaining a statement from the bar, **two**, failed to take necessary action as he is a layman who lacks knowledge about, the soonest and **three**, pleading existence of contradictions and illegalities in the DLHT decision.

It is in this court's record that, the impugned decision was delivered on 30/06/2021, and the copy of the judgement was certified on 01/04/2022. Counting from the date the judgement to the date of filing of this application, the applicant is already late for 553 days, but because the copy of the judgement was certified on 1/4/2022 and since date of certification of the copy of judgement is considered to be the date the judgement was ready for collection by the parties. Be that as it may, still the applicant delayed for a period of 278 days and he had the duty to show good cause and account for each day of delay.

Courts, in numerous occasions have insistent that every day of delay must be accounted for. At this point, reference is made to the case of

Sebastian Ndaula vs. Grace Rwamafa, Civil Application No. 4 of 2014 (unreported) where the Court stated that,

"Delay of even a single day has to be accounted for, otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken"

As to the given reasons that, **one**, the applicant's delay to file appeal was due to the advocate and the law firm failure to take legal action after delivery of judgment, thence the delay. Unfortunately, I have gathered no affidavit from the advocate confirming the position that they are the causative agent for this unbearable delay. Firms are owned and operated by lawyers/ professionals who are aware of the legal procedures, however, laxity of lawyers, if any, is not a good cause for extension of time. The above position gets support from the decision in the case of **Exim Bank (Tz) Ltd vs. Jacquilene A. Kweka**, Civil Application No. 348 of 2020 (unreported) where the Court stated, among other things, that:

" . . . firms are manned by lawyers who ought to know court procedures. In fact, failure of the advocate to act within the detect of law cannot constitute a good cause for enlargement of time"

It is therefore, lack of diligence on the part of an advocate does not constitute good cause for extension of time, the position was also stated in the case of **Wambura N.J Waryuba vs. The Principal Secretary Ministry of Finance and another**, Civil Application no. 320 of 2023 the position was emphasised in the case of **Jubilee Insurance (Tanzania) Limited vs. Mohamed Samer Khan**, Civil Application No. 439/01 of 2020 (CAT - Dar es salaam) where the court stated that failure of the

advocate to act within the dictates of law cannot constitute a good cause for enlargement of time.

Two, the applicant's reason that, he is a lay person who lacks knowledge about this kind of application, thus the delay. This is a contraction from the first reason for delay. In ground one, applicant threw blames to advocates while in the second decide to shoot himself that, he is a layman. This confirms nothing but untruthfulness on what really caused the delay. However, it is settled legal principle that, ignorance of law is not a defence or excuse for failure to perform a legal duty. This legal position is cemented by the decision on the same in **Omar Ibrahim vs. Ndege Commercial Services Ltd**, Civil Application No.83 of 2020 (unreported) where the Court stressed that **neither ignorance of the law** nor counsel's mistake constitutes good cause.

Turning to the ground of illegality, it is a trite law that, illegality being one of good cause for extension of time must be raised timely. One cannot remain for a long period without pursuing for his right on the grant that he can do so at his own time since there is illegality on the decision. Equally, illegality must also be raised timeously, otherwise there will be no end to litigation.

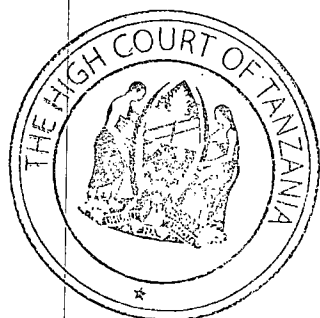
Considering the advanced reasons for delay and the courts' governing principles on extension of time as stated herein above, it is with no iota of doubt that, this application has nothing tangible to warrant this court exercise its discretion mandate to grant what is asked for.


The applicant delayed for a total of **278 days** from the date of decision certification and **553 days** from the date of decision without any sufficient cause. Thus, the delay to file appeal was due to negligence and inactiveness of the applicant.

For the above reasons and in the final result, this application is devoid of any merit and the same is hereby dismissed with costs.

It is so ordered.

DATED at MOROGORO this 10th March, 2023.




G. P. MALATA
JUDGE
10/03/2023