

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT ARUSHA**

**CIVIL APPLICATION NO. 25/02 OF 2016**

**AKONAAY SIDAWE ..... APPLICANT**

**VERSUS**

**LOHAY BARAN ..... RESPONDENT**

**(Application for extension of time to file an application for  
revision of the decision of the High Court of Tanzania  
at Arusha)**

**(Moshi, J.)**

**dated the 11<sup>th</sup> day of March, 2016  
in**

**Misc. Land Application No. 13 of 2015**

**RULING**

20<sup>th</sup> & 27<sup>th</sup> February, 2017

**MWAMBEGELE, J.A.:**

On 09.11.2012, the High Court (Massengi, J.) dismissed with costs the applicant's appeal in Miscellaneous Land Appeal No. 20 of 2009 in which he was challenging the decision of the District Land Housing Tribunal of Karatu in Land Case Appeal No. 15 of 2008. It was his second appeal having first lost in Baray Ward Tribunal in Shauri la Madai Na. 24 of 2007 in which he was sued by the respondent herein over a parcel of land. For some reason, the applicant did not challenge the decision of the High Court in time. He

thus, vide Miscellaneous Land Application No. 13 of 2015, applied for extension of time within which to lodge an application for leave to appeal to this court and for a certificate that a point of law was involved for determination by this court. That application was unsuccessful; the High Court (Moshi, J.) was of the view that the applicant did not place before the court sufficient reasons to account for the delay of more than two years to warrant the extension sought. That decision, again, did not make the applicant happy and wished to challenge it by way of revision. However, again, he could not do that in time. Thus, by a Notice of Motion, he has made the present application under the provisions of rules 10 of the Tanzania Court of Appeal Rules, 2009 (hereinafter referred to as the Rules) seeking extension of time within which to file revision in this court against that decision. The Notice of Motion is supported by an affidavit duly affirmed by Akonaay Sidawe; the applicant.

When the application was called on for hearing on 20.02.2017 only the applicant appeared; he appeared in person and unrepresented. The respondent did not appear and the court process server had sworn an affidavit deposing that the applicant

refused to put his signature on the original summons/refused service and left a copy with him. In the circumstances, I ordered hearing of the application to proceed in the absence of the respondent in terms of rule 63 (2) of the Rules.

Arguing the application for himself, the applicant adopted what he deposed in the affidavit supporting the Notice of Motion. It is worth noting at this juncture that the applicant did not file any written submissions as dictated by the provisions of rule 106 (1) of the Rules. However, as the applicant is a lay person of old age, I thought the circumstances of this case are so exceptional and decided to proceed without them; that is, the written submissions. The Court is bestowed with this mandate by sub-rule (19) of rule 106 of the Rules.

Be that as it may, the main reason for the delay to challenge the decision refusing the applicant extension of time is stated at para 3 of the affidavit of the applicant as the High Court's failure to supply him with a copy of the ruling in time. By the time the same was availed to him, he deposes, time within which he could file revision

had elapsed. The applicant adds that he, being diabetic, could not make frequent movements from Karatu (where he resides) to Arica.

The law relating to applications of this nature is well settled in this jurisdiction. From the jurisprudence of this court, it is trite that an application for enlargement of time within which to take any step in legal proceedings is entirely in the discretion of the Court to grant or refuse it. It is also trite that extension of time may only be granted where it has been sufficiently established by an applicant that the delay was with sufficient cause. There is a string of authorities on this point. Some are: **Mumello v. Bank of Tanzania** [2006] 1 EA 227, **Kalunga and Company Advocates v. National Bank of Commerce** [2006] TLR 235, **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported), to mention but a few and **Yusufu Same & Anor v. Hadija Yusufu**, Civil Appeal No. 1 of 2002.

What amounts to sufficient cause has not been defined by the Rules. But as was held in **Regional Manager, TANROADS Kagera v. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported), **Yusufu Same & Anor v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 and **Tanga Cement Company Limited v. Jumanne D. Massanga and Amos A. Mwalwanda**, Civil Application No. 6 of 2001 (unreported), extension of time being a matter within the Court's discretion cannot be laid down by any hard and fast rules but will be determined by reference to all the circumstances of each particular case.

Taking inspiration from the above authorities, I am now called to determine the present application taking into consideration the peculiar circumstances of this case. I have considered the applicant's reasons for the delay. Through affirmed evidence, he has ascribed the delay to the copy of ruling being supplied to him while time for filing revision had expired. This evidence has not been controverted by the respondent who, ostensibly, did not file any affidavit in reply and reply written submissions. Neither did he appear at the hearing of this application and there is in place an affidavit of the court

process deposing that he refused sign the original summons and that he left a copy with him. I this is enough evidence from the applicant showing why he could not file the intended revision in time.

In addition to the above, I also carefully observed the applicant at the hearing of the application. The applicant, a lay person who has all the looks of a nonagenarian, feeling aggrieved with all the decisions against him, was firm that he wants to pursue his cause to its finality. At the hearing, amplifying the contents of paras 4 and 5 of the affidavit supporting the Notice of Motion, the applicant complained of his lawyer not making satisfactory follow-ups on his case thereby causing delays in taking necessary steps thereby taking him into the present mess. Generally speaking, negligence or lack of diligence of an applicant's advocate does not constitute good cause to grant extension. However, in **Yusufu Same** (supra), the Court, relying on its earlier decision of a single judge of this court of **Felix Tumbo Kisima v. TTC Limited and Another**, Civil Application No. 1 of 1997 (unreported) articulated:

*"But there are times, depending on the overall circumstances surrounding the case,*

*where extension of time may be granted  
even where there is some element of  
negligence by the applicant's advocate ..."*

Negligence of the applicant's advocate was a subject of complaint even in the impugned decision. That complaint also surfaced in the present application. I have considered this complaint. Having so done, I think the applicant is justified in his complaint. He is also right when he urges the Court at para 4 of the affidavit to consider "the picture of the case right from its grass root".

As an extension to the above, I have considered the fact that the applicant is defending his cause since 2007 when he was successfully sued in the Ward Tribunal. He unsuccessfully appealed to the District Land and Housing Tribunal and the High Court of Tanzania. Relentlessly, he also unsuccessfully attempted to challenge the decision of the High Court out of time and once again, determined, he has filed the present application. I think justice will smile if the applicant is given an opportunity to pursue his cause to its finality. This can only be done by granting the order sought in the instant application.

With the foregoing in mind, I am satisfied that the applicant has brought to the fore sufficient reasons to justify the extension sought. This application is therefore allowed. In **Halais Pro-Chemie v. Wella A.G** [1996] TLR 269, the Court took inspiration from the Law of Limitation Act, Cap. 89 of the Revised Edition, 2002 and adopted the time-scale of sixty (60) days' limitation for revision. The limitation period within which to file an application for revision is therefore sixty (60) days. In the premises, the applicant is to file the intended application for revision of the ruling of the High Court of Tanzania dated 11.03.2016 (Moshi, J.) in Miscellaneous Land Application No. 13 of 2015 within sixty (60) days reckoned from the date this ruling is pronounced. No order is made as to costs.

Order accordingly.

**DATED at ARUSHA** this 22<sup>nd</sup> day of February, 2017.

J.C.M. MWAMBEGELE  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
A.H. MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**