

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(IRINGA DISTRICT REGISTRY)

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 13 OF 2018

(From the decision of the District Land and Housing Tribunal for Iringa in Land case Appeal No.106 of 2015, Originating from Ward Tribunal of Ilula in Land Case No. 04 of 2015)

MAIMUNA KHALIFAN APPLICANT

VERSUS

JACKSON MWENDELE RESPONDENT

19 & 29/5/2020

RULING.

MATOGOLO, J.

This is an application by the applicant one Maimuna Khalifan for an order that the court be pleased to enlarge time to allow her to file an appeal out of time. She also prays for costs and any other order as the court deems fit and just to grant.

The application was made under Section 38(1) of the Land Disputes Courts Act, (Cap. 216 R.E 2002) and is supported by an affidavit affirmed by the applicant.

The brief background of the dispute is that the respondent sued the appellant for trespass on his house before the Ilula ward Tribunal, and the suit ended in favour of the respondent. The appellant appealed against the decision of the Ward Tribunal, still the respondent won the case. The applicant was aggrieved with the decision hence this application.

At the hearing of this application the applicant appeared herself (unrepresented) while the respondent was represented by Mr. Alfred Kingwe the learned Advocate.

The application was argued by way of written submissions.

In her submission in support of the application, the applicant submitted that, she delayed to file an appeal in time due to elderly and sickness of severe Alzheimer's disease.

She argued that it is trite law that there can only be one reason to warrant the court to grant extension of time and that is existence of good and sufficient cause and what amounts to good and sufficient cause is a matter of fact.

She buttressed her argument by citing the decision of Court of Appeal of Tanzania in the case of ***Aidan Chale versus The Republic, Criminal Appeal No. 130 of 2003 at Mbeya*** (unreported) when it adopted with approval reasoning in *Republic versus Governor of Winchester Prison, ex p. Roddie (1991) 2 ALL ER 931*, at pg 934 Lloyd, L.J. said;

"Good cause will usually consists of some good reason why that which is sought should be granted. It does not have to be something exceptional. To amount to good cause there must be some good reason for what is sought. It was considered that it was undesirable to define good cause and that it should be left to the good sense of the tribunal which has to decide whether or not good cause has been disclosed".

The applicant also referred this court to the case of ***Benedict Mumelo versus Bank of Tanzania (2006) 1 EA 227***, in which the Court of Appeal of Tanzania held that;

"Extension of time to appeal is discretion of the Court to grant or to refuse it and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause"

It is the argument by the applicant that elderly and sickness to wit, severe Alzheimer's disease as she alleged in paragraph 5 of her affidavit is sufficient reason to warrant this court to grant the applicant application.

In reply Mr. Kingwe submitted that the judgment in Land Appeal No. 106 of 2017 was delivered by Hon. Hatson, Tribunal Chairman on 16th

Day of October 2017 in the presence of the applicant and that this application was filed after the lapse of 150 days.

Mr. Kingwe submitted further that the applicant has been negligent and sloppiness in action since the day of deliver of the judgment that is to say on 16th day of October, 2017 when she was aggrieved by the decision, it follows that, on 31st day of October, 2017 it is when she requested the copies of judgment and order to facilitate her appeal. He said the applicant failed to prove that she had made any effort or follow up before the trial tribunal so that the said documents requested should be prepared and supplied on time.

Mr. Kingwe submitted that, it is an established principle of law that, for an application for extension of time to be granted the applicant must advance reasonable cause of delay and has to account for each day. He argued that negligence is not one of the sufficient causes for extension of time and in the present application it is easy to say that the applicant has been negligent, demonstrated inaction or that the delay was excessive. He said, this has been proved by the applicant herself after obtained the said copies from the Tribunal on 19th day of December 2017, she spend almost 86 days to file the present application.

He further argued that the applicant has not been diligent in taking legal action. To support his argument he referred this court to the case of ***Martha Khotwe versus Miston Mwanjamila***, Civil Application No. 5 of 2014 (unreported), in which it was emphasized diligence on part of the

applicant, and at any rate negligence does not constitute good and sufficient cause to warrant extension of time.

Mr. Kingwe submitted further that the only reason advanced by the applicant in her application to delay to file appeal in time is due to elderly and sickness to wit severe Alzheimer's diseases. He said that however the applicant failed to explain on how the said sickness affected her in taken legal action on time and no evidence to prove the same. That is to say she fails to explain when the sickness began and when she recovered from the said sickness, especially after she has obtained the said documents from the tribunal. She did not even state at what hospital or medical institutions she received treatment so as to fail to appeal on time.

He argued that the issue of illness alleged by the applicant as one of the reason which made her not to appeal on time is a mere defense and in fact, the applicant was not sick as alleged in her submission.

Mr. Kingwe submitted that, he is aware that, in applications for extension of time is upon the discretion of the court to grant the extension, however this discretion is to be exercised judicially. He argued that the court has to take a number of factors before an extension is granted including whether the applicant acted diligently in taking legal action. He supported his argument by referring this court to the case of ***Finca (T) Limited and Kipondogoro Auction Mart versus Boniface Mwalukisa***, Civil Application No.589/12 of 2018(unreported), in which the court referred 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 (unreported), and in ***Henry Muyaga versus TTCL, Civil Application No. 8 of 2011(unreported)***, in which the court discussed what judicial discretion is amongst other things and stated as following;

".....the court may take into consideration, such factors as, the length of delay, the reason of delay".

It is the argument by Mr. Kingwe that the act of applicant to remain silent without taking any legal action after the delivery of the judgment and even after obtaining copies of judgment was nothing but a trim negligence on her side.

The learned counsel submitted further that the applicant's prayer for extension of time to appeal out of time in this application was caused by her dilatory conduct, inaction and/ or negligence, she does not show that she acted diligently and reasonably in pursuing her appeal process and the case ***of Benedict Mumelo versus Bank of Tanzania (2006) 1 E.A 227*** she cited, cannot help her since the circumstance or situation differ from the present application in question.

He went on to state that in the application at hand, the applicant has not established any cause to convince the court to decide in her favour. She said in the case of ***Finca (T) Limited and Kipondogoro Auction Mart Versus Boniface Mwalukisa*** (supra), Court of Appeal of Tanzania at Iringa W.B Korosso, J.A, stated inter that;

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

Mr. Kingwe concluded that, this application does not hold water and prayed that this application be dismissed in its entirety with costs.

In rejoinder the applicant submitted that the respondent allegation that the applicant has been negligent and sloppiness in action to file appeal in time has no leg to stand because even in her affidavit especially paragraph 6 specifically stated that the reason for delay in filling appeal were beyond his own control and not negligence or inaction.

The applicant further submitted that she delayed to file the appeal in time because of elderly and severe Alzheimer's disease and the respondent allegation that the applicant did not explain how the said sickness affected her is immaterial because sickness is confidentiality between sick person and his/her own doctor.

Hence the applicant prays that this application be granted and costs to follow the event.

Having heard the submissions by the parties and having carefully gone through the court records, the issue for determination by this court is whether the applicant has demonstrated or advanced sufficient cause of delay to warrant extension of time by this court.

It is trite law that an application for extension of time is within the discretion of the court to grant it or refuse to grant. However the discretion must be judiciously exercised. The Court of Appeal of Tanzania by Msofe J.A (as he then was), ***In Martha Iswalile Vincent Kahabi versus Marieth Salahe and 3 others, Civil Application No.5 of 2012 at Mwanza (unreported)*** religiously held that;

"It is a common ground that an application of this nature is at the discretion of the Court. In exercising the discretion the court must be satisfied that there are good grounds to decide in favour of an application".

Before the court decides to grant or not to grant an extension of time to appeal out of time, there are factors to be considered by the court, as it was held in the case of ***Lyamuya Construction Company Ltd versus Board of Registered Trustee of Young Women Christian Association of Tanzania***, Civil Application No.2 of 2010 (unreported), in which Massati, JA as he then formulated the following factors;

- (i) The applicant must account for all the period of delay.*
- (ii) The delay should not be inordinate.*
- (iii) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

(iv) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged.

In the instant application the reasons for the delay adduced by the applicant are two if not three; the first one is that she was supplied with the copies of judgment and decree by the District Land and Housing Tribunal late.

It is quite clear from the tribunal records that the Judgment was delivered on 16th day of October 2017, the applicant applied to be supplied with a copy of judgment on 31st day of October 2017 that is 15 days after the delivery of judgment and she was supplied the same on 19th day of December 2017, 63 days from the date judgment was delivered. It is obvious that she had already delayed by three days. The present application was filed on 15th day of March 2017, almost five months from the date the judgment was delivered.

The present application is filed under ***Section 38(1) of the Land Dispute Court Act (Cap. 216 R. E. 2002)***, which provides as follows;

"Any person, who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of decision or order appeal to the High Court (Land Division)".

With regard to the first reason for delay that she was supplied with the copy of judgment late to my opinion this reason appears to be attractive but is defeated by the fact that the applicant did not apply for it immediately after the judgment was delivered, she applied for the same after 15 days, although the tribunal judgment was pronounced in her presence. This shows how the applicant was not diligent in prosecuting her case.

Also the applicant was supposed to make sure that she make follow up so as to be supplied with the documents immediately so as to pursue her right to appeal to challenge the decision of the District Land and Housing Tribunal on time as prescribed by the law the same it was held in the case of ***Dr. Ally Shabhay versus Tanga Bohora Jamaat [1997]TLR 305***, the Court held that;

"Those who wishes to come to court of law must not show unnecessary delay in doing so especially where a prescribed limitation period is provided by the law they must show due diligence"

Furthermore the applicant complained that the delay was occasioned by the District Land and Housing Tribunal for Iringa by supplying the copies of judgment late but she failed to prove the allegation. It is a cardinal principle of law that who alleges must prove, see the case of ***Rock Beach Hotel Ltd versus Tanzania Revenue Authority***, Civil Appeal No. 52 of 2007 (unreported). The applicant failed to prove her allegation with regard

to the first reason as there is no evidence to prove the same, and the copies of judgment being certified on 19th day of December 2017 as revealed on the court records, it does not necessarily mean that the documents were ready for collection on that date may be they were ready for collection before that date, but the applicant due to her negligence went late and the same were certified when the applicant went to collect a copy. This reason is baseless the same is disregarded.

The second ground of delay adduced by the applicant is sickness and elderly, this reason also is baseless since there is no evidence attached to the affidavit such as medical chits to prove that the applicant was sick and she was either admitted in hospital or she was attending medical treatment to a certain hospital and how long she has been sick because it is a requirement of law of accounting for every day of delay as it was emphasized by the Court of Appeal of Tanzania in the case of ***Bushiri Hassan versus Latifa Lutiko, Mashayo***, Civil Appeal No.3 of 2007 (unreported), the court stated;

"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".

The issue of elderly also is baseless, because even though she is older but she has children whom they can assist her in pursuing her case, as even when this application was coming for mention before this court the applicant was having escort with her daughter whom she was able to assist

her. So this reason is baseless, and the applicant is supposed to know that this is court of law guided by rules and principles and not a court of mercy. And further that rules of procedure cannot be discriminatory, the same apply equally for all regardless of their age, gender or position the occupy in the society.

Due to the reasons advanced above it is my considered opinion that the applicant in this application has not been diligent in pursuing her case and the delay was caused by her negligence. More ever she was sloppiness in the prosecution her case and this can be evidenced by her acts or omissions. For example after obtaining the documents on 31st day of December 2017 until when she filed this application on 15th day March 2018 almost three months elapsed but she has failed to tell the court as to what she was doing.

It is my considered opinion that the applicant has failed to advance sufficient cause that would entitle her extension of time by this court as sought. I find this application without merit the same is dismissed.

It is so ordered.


F. N. MATOGOLO
JUDGE

29/5/2020.



Date: 29/05/2020
Coram: Hon. F. N. Matogolo – Judge
L/A: B. Mwenda
Applicant: Present
Respondent: Absent
C/C: Grace

COURT:

Ruling delivered this 29th day of May, 2020 in the presence of the Applicant but in the absence of the Respondent.


F. N. MATOGOLO
JUDGE

29/5/2020.

