

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
IRINGA DISTRICT REGISTRY
AT IRINGA

MISCELLANEOUS LAND APPLICATION NO. 21 OF 2018

(Originating from Lad Appeal No. 8 of 2014, Iringa High Court at Iringa and
Application No. 9 of 2009, Njombe District Land and Housing Tribunal)

GELARD MLELWA ----- APPLICANT

VERSUS

DAN ASSOCIATES ENTERPRISES ----- RESPONDENT

RULING

KENTE, J

This is an application for extension of time within which the applicant Gelard Mlelwa can file a Bill of Costs. The application is made under section 14 (1) of the **Law of Limitation Act** and is supported by an affidavit sworn by the applicant himself.

The brief background of this application is that the respondent Dan Associates Enterprises lodged an appeal before this court after being aggrieved by the decision of the District Land and Housing Tribunal at Njombe. However, the said appeal was dismissed with costs by my sister Hon. Shangali Judge (now retired). Immediately thereafter, the applicant did not lodge the bill of costs in time hence this application.

During the hearing of this application the applicant was represented by Dr. Utamwa learned Advocate while the respondent's case was advocated for by Mr. Ngafumika Learned Advocate. Upon leave of this court, the application was argued by way of written submissions.

Dr. Utamwa submitted in support of the applicant's case that, there is one prime reason for the delay in filing the bill of costs, which reason was beyond the means of the applicant who is a layman, completely ignorant of legal procedures. That upon misunderstandings with his first counsel, the applicant lost the track of his case until 22nd of May, 2017 when he received a summons from the respondent instead of getting dates (sic) from his counsel. This is the time the applicant allegedly came to realize that the appeal had already been determined. He therefore consulted his Lawyer who drew the Bill of Costs which was given back to him and he sent it to the Deputy Registrar of this court on the first week of July, 2017. Dr. Utamwa submitted further that however, the bill was rejected on the grounds that it was written "Registrar Officer" instead of "Registry Officer". Upon rejection the applicant took it back to his counsel who is based at Mbeya. Unfortunately, however, it is further contended, he did not find him because the said advocate had gone to his home village in Bukoba .The

applicant after seeing that his counsel was not returning to work in time, he decided to hire another advocate who promptly filed the present application for extension of time.

Dr. Utamwa submitted further that this court, being a court of substantive justice, and not a court of legal technicalities, should see that justice is not only seen to be done but the same should be seen to be manifestly done. The learned counsel submitted further that regard should be had to the status of the applicant being a layman who is not conversant with legal matters as well as his economic status as he is a mere peasant. That the applicant had managed to hire an advocate at the District (tribunal) level. However, when the matter went to the level of appeal that is when the misunderstandings with his advocate started because of poor finances to pay him.

Dr. Utamwa submitted further that Article 107A (2) (e) of the **Constitution of the United Republic of Tanzania** requires the Courts to ensure that substantive justice is keenly adhered to than embracing technicalities in the dispensation of justice. To cement his argument the learned Advocate referred this court to the case of **Finca Tanzania Ltd vs. Wildman Masika and 11 Others, Civil appeal No. 173 of 2016.**

He urged this court that this application for extension of time be allowed.

In reply, Mr. Ngafumika opposed the application and submitted that the applicant is applying for the extension of time to file a Bill of costs for costs arising out of two cases. According to Mr. Ngafumika the applicant misses the point as the High Court has no jurisdiction to extend time to file bill of costs in a different court, neither can costs incurred in litigation in one court be claimed in a different court in the absence of an order to that effect. Mr. Ngafumika argued further that the applicant's application restricts them to argue only in relation to the intended bill of costs in respect of Land Appeal No. 08 of 2014.

Mr. Ngafumika went on submitting that the applicant had not accounted for each day of the delay in that range of time, and that the argument that he had filed an application which was rejected has not been substantiated as no affidavit of the Deputy Registrar or even a registry Officer who received the said purported application is annexed to support the allegation, neither is a copy of the said application attached to the present application.

The learned counsel submitted that it is worse for the applicant's failure to account for each day of delay for the period from the first week of July 2017 when his first application was rejected till 05th June 2018 when the present application was filed. It is the argument by Mr. Ngafumika that what is even worse is that the applicant had not taken any initiative to file his first application in the first week of July 2017 and there is therefore no accounting of delay for the period of July 2017 until June 2018 to enable this court exercise its discretion in the applicant's favour.

It is the argument by Mr. Ngafumika that the accounting for each day of delay as a factor to be considered by the court in deciding whether to exercise its discretion to extend time or otherwise has been articulated times without numbers by the Court of Appeal of Tanzania and in some of such instances, to cement his argument, Mr. Ngafumika cited the following cases, **Dar es Salaam City Council Vs. S. Group Security Co. Ltd, Court of Appeal of Tanzania at Arusha Civil Application No. 234 of 2015, Tropical (TZ) Limited Vs. Godson Eliona Moshi , Civil Application No. 9 of 2017, Court of Appeal of Tanzania At Dar es Salaam, Elfazi Nyatega and Others Vs. Caspian Mining Ltd, Civil**

Application No. 44 of 2017, Court of Appeal of Tanzania at Mwanza (all unreported).

Mr. Ngafumika went on submitting that the authority cited by the Learned Counsel for the applicant is irrelevant for purposes of an application for extension of time. He said the issue in that case was a question of a defective application while in the matter at hand we are dealing with the question of extension of time. It is the argument by Mr. Ngafumika that even the overriding objective principle cannot blindly be applied here to accommodate noncompliance with the mandatory procedural requirements of the law.

Counsel for the respondent further contended that the question of time is of such significance that it affects the jurisdiction of the court and therefore the question of limitation can in no way be dealt with in a similar manner as if we are dealing with minor technical defects. To support his argument the learned counsel cited the case of **Chibundi Company Limited Versus Tanzania National Road Agency and 3 others, Land Case No. 127 of 2011 High Court of Tanzania (Land Division) at Dar es salaam** (unreported). He thus implored this court to dismiss the application with costs.

In rejoinder, Dr. Utamwa learned advocate essentially repeated what he had stated in his submission in-chief. Moreover, he was emphatic that the grant of an application for extension of time to enable the applicant file his bill of costs though discretionary, is inevitably important and indispensable in this matter, as it will enable the court to observe, the doctrine of overriding objective and what he called practical dispensation of justice. He finally reiterated his prayer to this court for this application to be granted.

Now, to start with, it is trite but worth noting that, it is a general principle that an application for extension of time is entirely in the discretion of the court to grant or refuse to grant. However, we are further guided that the said discretion must be judiciously exercised. The Court of Appeal of Tanzania by Msoffe J.A (as he then was) in **Martha Iswalile Vicent Kahabi Vs. Marieta Salehe and 3 Others, Civil Application No. 5 of 2012 at Mwanza** (unreported), had this to say on this point, thus:-

"It is 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”.

Moreover, there are some factors to be considered by the court when deciding to grant or not to grant extension of time to an applicant. In the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010**, it was held that;

- (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 present application the applicant told this court that he could not lodge the application within time because of illiteracy on matters of

law, poverty and the court itself which allegedly contributed to his delay due to the fact that on the first week of July, 2017 he filed a bill of costs but the same was rejected by the Registrar.

Notably, the limitation period for filing bill of costs is within 60 days from the date of the decision. That is what was held in the case of **Union of Tanzania Local Oil Companies versus Tanzania Association of oil Marketing Limited and Another, Commercial Case No. 95 of 2005, High Court of Tanzania at Dar es Salaam** (unreported).

I have perused the court record in the instant case which reveals that this application emanates from Land Appeal No.08 which was decided by this court on 31st March of 2017 and the second one is Land Application No.09 of 2009. The court record also shows that this application was filed before this court on 5/6/2018. The applicant had therefore delayed to take action for almost one year and two months.

The applicant complains that one of the reasons for the delay to take action was the Registrar of this court after she rejected his application. That was in the first week of July 2017, but the applicant has failed to substantiate his allegations even by attaching copies of the said application which was rejected or an affidavit by the Court Registrar to prove the

same. For that reason, I find that explanation to be wanting and therefore not a good ground for this court to exercise its discretion and grant this application.

The second reason for delay as advanced by the applicant is illiteracy on matters of law. In my view, that explanation does not appeal to me as in my opinion, ignorance of the law is not a good cause for extension of time.

It also appears to me that the delay for a year shows sloppiness on the part of the applicant. The Court of Appeal of Tanzania has several times insisted that whoever seeks to move the court must do so timely. (See the case of **Loswaki Village and Paresoi Ole Shuaka Vs. Shibeshi Abebe, Civil Application No.23 of 1997** (unreported) where the court held that:-

"Those who seek the aid of the law by instituting proceedings in a court justice must file such proceedings within the period prescribed by law, or where no such period is prescribed within a reasonable time".

The applicant in the present case has failed to account for each day of the delay. In my view, he had ample time within which to lodge the bill of costs before the court something which he did not do for the reasons best known to himself.

For the reasons given above, I find this application to have no merit. I accordingly dismiss it with costs.

It is so ordered.

DATED at IRINGA this 2nd day of April, 2020.



P. M. KENTE
JUDGE