

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[DISTRICT REGISTRY OF ARUSHA]
AT ARUSHA

MISC. CIVIL APPLICATION NO. 81 OF 2019

(C/F the decision of the District Land and Housing Tribunal for Arusha District at Arusha, Land Appeal No. 59 of 2016, Original Sokon II Ward Tribunal, Application No. 5 of 2016)

NAPAYA KILEVORI APPLICANT

Versus

NG'IDA LOISULE RESPONDENT

RULING

7th September & 16th October, 2020

Masara, J.

Napaya Kilevori, the Applicant herein, has brought this application praying for extension of time to file an appeal against the judgment delivered by the Arusha District Land and Housing Tribunal at Arusha (the appellate Tribunal) dated 27th July, 2017 which had dismissed his appeal against the decision of Sokon II Ward Tribunal. The appellate Tribunal dismissed the appeal for the ground that the Appellant had delayed in lodging his written submission in chief and the rejoinder submission and that he had not obtained leave to refile the same out of time. After that decision the Appellant felt dissatisfied and wrote a letter asking for the copy of Judgment and decree. The letter was written on 27th July 2017, the same day that the judgment was delivered.

According to the affidavit in support of the application, the Applicant made several efforts in the endeavour to be supplied with copies of judgment

and decree. Ultimately a certified copy of judgment was supplied to him on 22nd September, 2017. After getting the said copy, he filed Land Appeal No. 14 of 2018 to the High Court and lodged the same at the appellate tribunal on 19th October, 2017. Pursuant to the objection raised by **Ng'ida Loisule**, the Respondent herein, his appeal was struck out on 9th October 2019 hence this application that was lodged on 16th October, 2019.

The Application is supported by the affidavit sworn by the Applicant. The Respondent contested the application by filing Counter Affidavit which was sworn by the Respondent. At the hearing, the Applicant was represented by Mr. Lawena, learned advocate, while the Respondent appeared in person, unrepresented. Hearing of the application proceeded through written submissions, a schedule of which was complied with by both sides.

In his written submissions, Mr Lawena adopted and sought reliance on the affidavit in support of the application. He argued that the main reasons for the delay to file the appeal is the fact that he did not receive the copy of the judgment in time despite having written a letter and several follow ups. The learned counsel further added that having applied for the necessary documents, it was the duty of the Tribunal to acknowledge receipt thereof and to supply him with the said documents which are necessary for appeal purposes. He cited the Court of Appeal decision in ***Juma Omary and 6 Others Vs The Director, Mwanza Fishing Industry***, Civil Application No. 14 of 2014 (Unreported) to buttress his argument.

Mr. Lawena also submitted that after the initial appeal was struck out, it took only seven days to submit this application and that in line with Section 41 (2) of the Land Dispute Courts Act (sic), Cap. 216 as amended, appeal from the Tribunal may be lodged 45 days after the decision or order. The learned counsel submitted that the delay was for a good cause as was held in ***Zahara Kitindi and Another Vs. Juma Swalehe and 9 Others***, Civil Application No. 4/05/2017 (CAT-Unreported). He also pointed out that the delay from the time he filed the first appeal to the time it was struck out fall in the category of technical delays which are excusable. The last ground raised by Mr. Lawena is the existence of an illegality apparent in the trial Tribunal's proceedings; to wit, failure to involve assessors and involving the Secretary in decision making.

Responding to the written submissions, the Respondent after praying to adopt his counter affidavit, he challenged the authenticity of the letter said to have been written by the Applicant on 27 July 2017. He submitted that the same does not bear the stamp of the Tribunal which makes its authenticity doubtful. Regarding sufficient cause, the Respondent submitted that reasons submitted are not sufficient to warrant extension of time as the Applicant failed to account for each day of delay. He cited the Court of Appeal decision in Tropical Air (T) Limited Vs. Godson Eliona Moshi, Civil Application No. 9 of 2017 (unreported) to support his argument. On whether there was a technical delay that may justify the extension of time, the Respondent submitted that such excuse should not be entertained since the Applicant having received the necessary

documents on 19th September 2017, he did not file the appeal up to 9th October, 2017 which is indicative that he was negligent and reckless.

I have thoroughly considered the written submissions of both parties and their respective affidavits. The pertinent issue for consideration is whether the delay in filing the appeal was necessitated by sufficient cause to warrant the prayer for extension of time to appeal to this Court. The law is settled that sufficient cause for the delay is *conditio sine qua non* for the application for extension of time to be granted. Whether to grant the application for extension of time or to reject it, is discretionary. However, courts have been urged to exercise that discretion judicially. There is a litany of authorities to that effect. The Court of Appeal in ***Bharya Engineering & Contracting Co. Ltd Vs. Hamoud Ahmed Nassor***, Civil Application No. 342/01 of 2017 (unreported), stated:

"...the Court will only exercise its discretion in favour of an Applicant only upon showing good cause for the delay. What amounts to good cause cannot be laid by any hard and fast rules but is dependent upon the facts obtaining in each particular case."

In ***Stanzia Stanley Kesy Vs. Registered Trustees of Agricultural Inputs Trust Fund and 3 Others***, Civil Application No. 46 of 2005 (unreported), the Court of Appeal held:

"In invoking the provisions of rule 8 of the Court Rules, 1979 the guiding principle in granting extension of time limited by the rules or any other law is for the court to be satisfied that sufficient cause has been shown for the delay. In this case, the issue is whether sufficient cause had been shown for the delay in filing the notice of appeal."

See also: ***The Principal Secretary, Ministry of Defence and National Service Vs. Devram P. Valambhia*** [1992] TLR 185; ***Blue line Enterprises Ltd Vs. East African Development Bank***, Misc. Civil Cause No. 135/95; ***Tumsifu Kimaro (The Administrator of the Estate of the Late Eliamini Kimaro) Vs. Mohamed Mshindo***, Civil Application No. 28/17 of 2017 and ***Alison Xerox Sila Vs. Tanzania Harbours Authority***, Misc. Civil Reference No. 14 of 1998 (all unreported).

In the application at hand, the Applicant in the affidavit in support of the application, contend that the delay was prompted by the fact that the appeal documents such as the judgment were availed to him late. The impugned judgment was delivered on 27th July, 2017 and on the very same date he wrote a letter requesting for the requisite appeal documents. He kept on reminding the Tribunal but in futile. After he received the judgment on 19th September, 2017, he filed an appeal to the High Court on 9th October, 2017 but that appeal was struck out by this Court on 9th October 2019. The current application was filed on 16th October 2019.

It is important to note that an appeal against the decision of the District Land and Housing Tribunal has to be accompanied by the decree/drawn order and the judgment or order sought to be challenged. In computing time, the time to file appeal against the decision of the District Land and Housing Tribunal is 45 days from the day the impugned decision was delivered. However, section 19(2) of the Law of Limitation Act, Cap. 89 [R.E 2019], mandates courts to exclude the time a party spent in obtaining

the requisite copy of decree or order sought to be challenged in computing time. The case of ***The Registered Trustees of the Marian Faith Healing Center @Wanamaombi Vs. the Registered Trustees of the Catholic Church Sumbawanga Diocese*** Civil Appeal No. 64 of 2006 (unreported) is instructive in this aspect, as the Court of Appeal observed:

"In view of what we have endeavoured to show above, and in the light of section 19(2) (supra), it follows that the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time. Once that period was excluded, it would again follow that when the appeal was lodged on 19/12/2003 it was in fact and in law not time barred."

The impugned judgment was delivered on 27th July, 2017 and the judgment was issued to the Applicant on 19th September, 2017. Therefore, the period between 27th July, 2017 and 19th September, 2017 was supposed to be excluded in computing time for appeal purposes. This suffices to hold that, according to Section 19(2) of the Law of Limitation Act, the Applicant was not time barred when he filed Land Appeal No. 14 of 2018. As stated by the Applicant's counsel, delay occasioned by the delay to be supplied with the requisite documents of appeal serves as good cause. In ***Mary Kimaro Vs. Khalifan Mohamed*** [1995] TLR 202, it was observed:

"The appellant cannot in the circumstances be held to be responsible for the delay in obtaining the copy of proceedings from the lower appellate Court. It is the lower appellate court which has contributed to such delay"

Squarely, the Applicant in this application cannot be held responsible for the delay considering the efforts he showed to ensure that the appeal documents are availed to him within time. He was in fact delayed by the appellate Tribunal.

Again, the Applicant stated in paragraph 9 of the affidavit in support of the application that his appeal (No. 14 of 2018) was struck out on a technical ground. Mr. Lawena has urged this Court to consider that as a technical delay. The Respondent, however, resists this argument. A technical delay has in a number of cases considered to be excusable. In ***Fortunatus Masha Vs. William Shija and Another*** [1997] TLR 154, the Court of Appeal had this to say:

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

As noted herein above, the first appeal was filed only 20 days or so after the Applicant received the necessary copies for appeal purposes. It should have been regarded to have been on time. I understand that there is diverse of opinion on what is the right procedure of dealing with such appeal, and the Applicant was caught in one of the two; that is, apply for extension of time in order for the Court to condone the delay. I consider that to be a technical delay which is excusable. The Respondent's

argument relating to the authenticity of the letter allegedly written by the Applicant on 27th July 2017 cannot be dealt at this stage as it may require evidence that is not readily available at this stage. I therefore exclude the delay between the time appeal No. 14 of 2018 was lodged to the time it was struck out.

The Appellant's counsel has also submitted that there is an illegality that this Court will be asked to address when the appeal is finally heard. He named such illegality as failure to involve assessors and involving the Secretary in decision making by the Trial Tribunal. In absence of all the records before me, I desist from commenting on the issue. It can only be addressed once all the facts are availed to the Court. Suffices it to say that illegality on the intended appeal is one of the factors to be taken into account in applications for extension of time. The case of ***Kalunga and Company Advocates Vs. National Bank of Commerce Ltd*** [2006] TLR 235 is instructive in this aspect, where the Court of Appeal observed:

"Since the point at issue is one alleging the illegality of the decision being challenged i.e the validity of the High Court's decision in interpreting a statutory provision and the propriety of a judge raising an issue suo motu, and making a decision without the parties concerned being heard upon it, sufficient reason has been shown for granting an extension of time to file application for leave to appeal to the Court of Appeal"

I have taken into consideration the fact that the Applicant's delay to file appeal to this Court, if any, was necessitated by the appellate Tribunal's failure to supply to him the requisite appeal documents on time. I also hold that the days utilised in getting the said copies are excluded from

computation of limitation period. Further, I have taken into consideration the fact that the time utilised to pursue Appeal No. 14 of 2018 is excluded from computation of delay, the same being a technical delay. I also have considered the fact that after the said appeal was struck out, this Application was filed 7 days thereafter. Furthermore, I have considered the fact that there may be an illegality in the decision sought to be appealed against. For those reasons, I am inclined to agree with the Applicant that the delay in filing appeal to this Court was necessitated by sufficient cause.

Consequently, I allow the Application and order the Applicant to file the intended appeal to this Court within 21 days from the day of this Ruling. Each party to bear their own costs for this application, considering that none of them is to blame for the delay.

Order accordingly.




Y. B. Masara

JUDGE

16th October, 2020