

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC LAND APPLICATION NO. 38 OF 2019

(C/F Land Application No. 94 of 2017 in District Land and Housing
Tribunal of Moshi at Moshi)

SETH JACOB NDOSSIAPPLICANT

VERSUS

GODFREY SWAI 1ST RESPONDENT

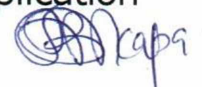
HAI DISTRICT EXECUTIVE DIRECTOR 2ND RESPONDENT

10th June, 2020 & 23rd July, 2020

RULING

MKAPA, J:

The applicant is seeking for extension of time to file appeal out of time against the decision of the District Land and Housing Tribunal for Moshi (trial tribunal) in Land Application No. 94 of 2015 delivered on 15th December, 2016. The application is brought under Section 41 (2) of Land Disputes Courts Act No. 2 of 2002 [R.E. 2002] as amended by Written Laws (Miscellaneous Amendment) No. 2 of 2016 and is supported by an affidavit sworn by the applicant. The 2nd respondent neither disputed the application nor appeared in Court despite a number of summons issued to that effect. The 2nd respondent disputed the application

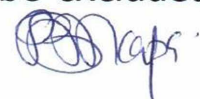


and filed a counter affidavits sworn by Mr. Engelberth Boniphace, District Solicitor for Hai District.

At the hearing parties consented that this application be heard by way of filing written submissions and the court so ordered. The applicant was represented by Mr. Chiduo Zayumba learned advocate while the 2nd respondent was represented by Mr. Engelberth Boniphace.

Arguing in support of the application, Mr. Zayumba submitted that, the main reason that caused the delay was the fact that after the decision subject to this appeal was delivered on 15th December, 2016, copies of Ruling and Drawn Order were issued on 7th February, 2017 while the time to appeal had already expired on 15th January, 2017. In the said decision the trial tribunal dismissed the application, he appealed against the said decision in this court the same was also dismissed for being time barred. He went on arguing that, the applicant had sought leave to the Court of Appeal but withdrew the same hence the current application.

The learned advocate further contended that, **section 19 of the Law of Limitation Act**, Cap 89 R.E. 2002 (Cap 89) provides for exclusion of the time spent for follow up of copies of decree or order subject to appeal thus the time the applicant had spent at the trial tribunal to procure the said copies should be excluded.

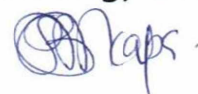


To support his argument he cited the decision in the case of **Fortunatus Masha V. William Shija & Another** [1997] TLR 154. He finally prayed for the application to be granted since the cause of delay was caused by technicalities.

Disputing the application, Mr. Engelberth started by arguing the fact that the applicant's counsel had not renewed his practising certificate since 31st December, 2019 thus the application and submissions prepared by him are null and contrary to **section 41 (1) of the Advocates Act**, Cap 341, [R.E.2019.], further that, there is no provision for extension of time cited by the applicant which can move the court to grant the prayers sought hence the application has to be struck out. To support his contention he cited the case of **Leila Meghil t/a House Enterprise V International Commercial Bank (Tanzania) Ltd.** [2016] TLS LR 332 where Mwambegele, J. held that;


"It is a trite law the failure to cite a proper provision of the law is fatal ailment rendering the application incompetent and liable to being struck out."

From the foregoing provision it was Mr. Engelberth's argument that, it was mandatory for the applicant to cite **section 14 (1) of Cap 89**, and since the enabling provision is missing, this court is therefore improperly moved.



Mr. engelberth went on submitting that although it is court's discretion to grant extension of time, the applicant has to show sufficient cause as to why the court should exercise such power. However, in applicant's affidavit as well as submission, he has not showed sufficient reasons to move the court to extend time, the position which has been enumerated in a number of cases including **Husna Hassan V Abdillah Shaban Mungai** [2016] TLS LR 266, **Lyamuya Construction Company Limited V Board of Registered Trustees of YWCA Tanzania**, Civil Application No. 2 of 2010 (unreported).

It was Mr. Engelberth further submission that, the applicant has filed a number of cases and withdraw them without seeking leave to refile. The mere assertion that she was late in receiving copies of judgment and decree (7th February, 2017) is not sufficient reason since she filed the present application on 25th September, 2019 which is more than 1,274 days delay unaccounted for. He finally submitted that the applicant is just wasting this court's precious time therefore the application should be dismissed with costs.

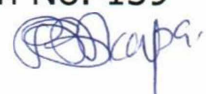
In his brief rejoinder the applicant reiterated his submission in chief and emphasized the fact that the application is brought under proper provision of the law and he has adduced sufficient reasons to warrant this court to grant the application. 

Having considered both parties' arguments for and against the application the main issue for determination is whether the applicant has shown sufficient reason warranting this court's discretion to grant extension of time.

It is trite principle that grant of extension of time is entirely upon court's discretion, and a party has to convince the court that there are sufficient reasons for the court to exercise its discretion. See **R V. Yona Kaponda & 9 Others** [1985] T.L.R, **Benedict Mumello V Bank Of Tanzania**, E.A.I.R [2006], **Eliakim Swai And Another V Thobias Karawa Shoo**, Civil Application No. 2 Of 2016 (Cat) At Arusha (Unreported).

In order for the Court to exercise its discretion, it is critical for the same to be furnished with the necessary information obtained from the affidavit deponed in support of the application. Examining the affidavit sworn by the applicant, I find it full of trial and error appeal and applications which from the outset suggests that the applicant is throwing a fish net in the ocean trying to catch whatever might come from the ocean.

On the 6th paragraph the applicant deponed that he lodged 3 applications Nos. 135/2015, 139/2015 and 94/2015 against the 1st, 2nd and others were lodged at the trial tribunal and all were dismissed for being time barred. He requested for copies of judgment and decree and appealed against Application No. 139



of 2015 and 94 of 2015 which were registered as Land Case Appeal No. 11 of 2016 and 06 of 2017 respectively. Further that appeal No 11 of 2016 was successful and the case was to be remitted to the trial tribunal to be heard on merit whereas Appeal No. 06 of 2017 was dismissed for being filed out of time. He then filed application for leave to appeal to the Court of Appeal against the dismissal order which was registered as Misc. Land Application No. 27 of 2018 but withdrew the same without seeking leave to refile hence this application.

From foregoing it is noteworthy pointing out that, the claim that he was late in obtaining the said copies are unfounded since after he received he had already used the same to lodge his appeals which were all dismissed. The appeal subject to this application emanated from the trial tribunal as Land Case No, 94 of 2015. The same was registered in this Court as Land Case Appeal No. 06 of 2017 and dismissed by **Hon Fikirini, J** on 22nd March, 2018. When dismissing it, the appellate judge had this to say;

"I find the 1st point off preliminary objection raised a valid and hereby proceed to dismiss the appeal pursuant to section 3 (1) of the Law of Limitation Act Cap 89 R.E. 2002, with cost. It is so ordered.

P.S. FIKIRINI
JUDGE
22nd MARCH, 2018"

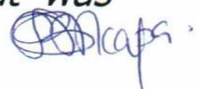


The appellant appealed against the above dismissal order, however, he withdrew the same without seeking leave to refile. It is my view that this is an abuse of court processes and the applicant is barred by law to seek extension of time to refile a dismissed appeal. This legal position has been illustrated in **Hashim Madongo and Two Others V Minister for Industry and Trade and Two Others, Civil Appeal No. 27 of 2003**, where the Court of Appeal at Page 10 and 11 held *inter alia*;

"That after the application before Kalegeya, J. was dismissed, as it should have been, it was not open to the appellants to go back to the High Court and file the application subject of this appeal ... the only remedy available to the appellants after the dismissal of the application was to appeal to the Court of Appeal and that the application for extension of time ought to have been filed prior to filing the application for prerogative orders ..."

The above position was reiterated by this court in court in the case of **Tanzania Breweries Ltd V Edson Muganyizi Barongo & 7 Others**, Misc. Labour Application No. 79 of 2014 where it was held that;

"...I think by and large that the present application which seeks to resurrect the application that was



dismissed by this court Rweyemamu, J. by way the applicants have adopted, cannot in my interpreting the case laws above be left to stand, it is worthless because if I grant the present application, I will be granting them an opportunity to bring back the application which Rweyemamu, J. dismissed. This cannot be done in premio legis (from the bosom of the law) if aggrieved by the dismissal of their application ... they should have taken the correct avenue of appealing against the dismissal of the their application to the Court of Appeal rather than coming from the backyard door by way of application for extension of time to file an application for being time barred by law..."

I fully subscribe to the above authorities, as this application is barred by law and the only remedy would have been for the applicant to appeal against the dismissal order. The application for extension of time would have been proper if lodged prior to filing the dismissed appeal. Having concluded so, the application lacks merit and is hereby dismissed with costs. It is so ordered.

Dated and delivered at Moshi this 23rd day of July, 2020




S.B. MKAPA

JUDGE
23/07/2020