

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISCELLANEOUS LAND APPLICATION NO 70 OF 2020**

**BETWEEN**

**PENDO KAWAWA** \_\_\_\_\_ **APPLICANT**

**VERSUS**

**OKECH ODIYO** \_\_\_\_\_ **RESPONDENT**

*(Arising from the decision and orders of the High Court of Tanzania at Musoma Galeba J, in Land Appeal No 2 of 2020 dated 05.06.2020)*

**RULING**

*21<sup>st</sup> January & 5<sup>th</sup> February 2021*

**GALEBA, J.**

This is an application for extension of time within which to file an application to seek for certification that there a point of law worthy reflection by the Court of Appeal in this court's judgment. That judgment in land appeal no 2 of 2020 relates to an unregistered land of about five (5) acres located at Shirati Sota village in Rorya district. The land had been litigated upon at Tai Ward Tribunal in civil case no 15 of 2018 and land appeal no 155 of 2018 in the District Land and Housing Tribunal at Tarime. An appeal from the latter judgment is what resulted in land appeal no. 2 of 2020 which was dismissed by this court on 05.06.2020.

When that appeal was dismissed by this court, the applicant filed miscellaneous land application no. 35 of 2020 seeking for the certificate but

when that application came up for hearing on 02.09.2020, Mr. Onyango Otieno learned advocate for the applicant prayed that the application be struck out because the same had been filed out time by one day. Naturally this court struck out that application instantly. Forty eight (48) days later, on 20.10.2020, the applicant showed up in this court and filed this application seeking for extension of time as stated above to file an application for certification of a point of law.

The issue in this application is whether the applicant had any good cause to explain the delay. Before me were Mr. Paul Obwana and Mr. Otieno learned advocates both appearing for the applicant on one hand and Mr. Ostack Mligo also learned counsel for the respondent on the other. Mr. Obwana argued the application and Mr. Mligo resisted it. Mr. Obwana divided the whole period from 05.06.2020 to 20.10.2020 in four (4) periods. The 1<sup>st</sup> period was from 05.06.2020 to 06.07.2020, (which period was allowable except one day), the 2<sup>nd</sup> period was from 06.07.2020 to 02.09.2020 (when there was pending miscellaneous land application no. 35 of 2020), the 3<sup>rd</sup> period was from 02.09.2020 to 25.09.2020 (when the applicant was facing financial difficulties) and the last period was between

25.09.2020 to 20.10.2020 when the matter was being filed electronically. These are the periods that Mr. Obwana endeavored to explain.

Before getting to the arguments of counsel, it is now a principle of law deeply rooted in our jurisprudence that for the court to be able to exercise its discretion to grant extension of time, the applicant must demonstrate good or sufficient cause explaining the delay. That is as per many decisions of the Court of Appeal including **Lyamuya Construction Company Ltd v Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application no 2 of 2010 (CA Unreported), **Caritas Kigoma v KG Dewsi Ltd [2003] TLR 420** and many other decisions. So we need to make a decision on whether each of the 4 periods was justified.

In explaining the 1<sup>st</sup> period, Mr. Obwana submitted that 30 days of that period was allowed except one (1) day which he argued that such day ought to be excused because the judgment was delivered in the absence of parties following prevalence of corona virus pandemic. In reply Mr. Mligo submitted that that fact is not reflected in the affidavit so it is an afterthought, and it should not be considered.

In respect of this period, I neither agree with Mr. Obwana nor with Mr. Mligo. I disagree with Mr. Obwana because public holidays are not excluded in computing periods for limitation purposes unless a public holiday coincides with the last day of the period in question, in which case the next following working day is counted as the last day to file the relevant proceeding. In this case the last day was 04.07.2020 which was a Saturday, which justifies filing the application on Monday 06.07.2020. In other words the applicant was justified to have filed miscellaneous land application no. 35 of 2020 on 06.07.2020. In other words, the 1<sup>st</sup> period was explained.

The 2<sup>nd</sup> period is that corresponding to the lifespan of miscellaneous land application no. 35 of 2020 which was struck out upon the applicant's own prayer. This period is explainable because the delay is legally technical and in law, it is good cause. That is to say the period from 06.07.2020 to 02.09.2020 was fully explained.

The next period to consider is 23 days running from 02.09.2020 up to 25.09.2020 when, according to Mr. Obwana, the applicant submitted the application to the court, although the actual filing of the application was on 20.10.2020. In respect of this period, Mr. Obwana submitted that, his client

was looking for money to facilitate her to file the appropriate application. In reply Mr. Mligo submitted that this point is an afterthought because it is not mentioned anywhere in the affidavit.

In respect of this period of 23 days, I will have to decide whether or not financial problems constitute good cause for one to delay filing a legal proceeding. In **Anthony Cholingo v Bolore Africa Logistics (T) Limited**, Miscellaneous Application no. 357, this court, Hon. Wambura (as she then was) held that the issue of financial problems cannot be a ground to explain delays in filing court documents. I am in full agreement with the reasoning of the Judge in the above cited case, because if courts were to hold that financial difficulties constitute good cause to explain delays for purposes of extension of time, then courts would have opened doors that they would not have muscles to shut again, without the risk of self-defeating; they would have opened doors for guests they has no ability to entertain. This court therefore holds that the applicant had no valid explanation for period running from 02.09.2020 to 25.09.2020.

Because that is enough to dispose of this application, I find no need to discuss other points relating to the 4<sup>th</sup> period. This application therefore stands dismissed with no orders as to costs.

DATED at MUSOMA this 5<sup>th</sup> February 2021



Z. N. Galeba  
**JUDGE**  
**05.02.2021**