

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

AT ARUSHA

MISCELLANEOUS LAND APPLICATION NO. 06 OF 2019

*(CF Land Application No. 11 of 2016, Karatu District Land and Housing
Tribunal)*

GEREMIA PHILIPO.....APPLICANT

Versus

BONIFACE DAMIANO NGAO.....RESPONDENT

RULING

15/02/2021 & 26/2/2021

MZUNA, J.:

In this application Geremia Philipo (*the applicant herein*) seeks for an order of enlargement of time within which to file an appeal from the decision of the District Land and Housing Tribunal of Karatu (*hereafter the Tribunal*) delivered on 23rd April, 2018. The respondent has been defaulting appearance despite efforts made to serve him. As a result, his raised preliminary objection on the point of law that the appeal sought to be filed is *res judicata* was marked as withdrawn for failure to prosecute it, leading to this application which proceeded *ex parte*.

The main issue *is whether the applicant has demonstrated good cause for enlargement of time.*

Reading the affidavit supporting the application, it is averred, as well argued by Mr. Ngogo learned counsel that on 16Th October 2018, the Land Appeal No. 32 of 2018 was struck out. The applicant wrote for request of copies on 23rd October 2018 and same was supplied on 10Th November, 2018. On 12Th November, 2018 he requested the Tribunal to rectify the defect in its impugned decree. On following up with the Tribunal he was informed that the record was at the court. He thus wrote to the Deputy Registrar requesting transfer of the said record and, obtained the rectified decree on 14Th January 2019. Thereafter he was trying to search for a lawyer to assist in drafting this application. In sum, he argued that the delay was not occasioned by the applicant's negligence. He prayed the court to allow the application with costs.

It is clear that the applicant has explained for the delay. The judgment sought to be impugned was delivered on 23rd April, 2018 which varied with the date of decree 9/5/2018 leading to the appeal Land Appeal No. 32 of 2018 being struck out on 16th October, 2018. In between there were communications by letters both from the applicant and the registrar for rectification of the defect. Copy of the corrected decree was availed on 14th January, 2019. He had to look for an advocate to handle the

matter and subsequent thereafter, the present application was filed on 28th January, 2019.

In dealing with this issue, whether to grant or not to grant the extension of time, I am aware, it is the discretion of the court, which however, must be exercised judicially. In the case of **Lyamuya Construction Company Limited v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 Court of Appeal at Arusha (unreported) it was held that: -

"The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,"

The applicant acted expeditiously and the application had been brought in good faith in line with the decision in the case of **Royal Insurance Tanzania Limited v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008, cited in **Sebastian Ndaula v. Grace Rwamafa**, (*Legal Representative of Joshwa Rwamafa*) Civil Application No. 4 of 2014 Court of Appeal of Tanzania (unreported) where it was held that: -

"It is trite law that an application for extension of time before the Court must satisfy the Court that since becoming aware of

the fact that he is out of time, act very expeditiously and the application had been brought in good faith."

The applicant has demonstrated what halted him to file the appeal in time. In essence there is no reason for the court to deny him extension of time. More so because the delay was caused by a technical delay as well stated in the case of **William Shija vs Fortunatus Masha** [1997] TLR 213 (CA), 219 where it was held that:-

"...In our understanding, what featured prominently... was the fact that the wrong application to the High Court was filed immediately after this Court struck out the appeal and that the delay in filing the application which was before him was technical..."

The above cited case law, cements the idea that technical delays are excusable, which is one of the grounds raised by the applicant. Other factors along with issue of technical delay as one of the sufficient cause to allow extension of time have been well stated in the case of **TanESCO vs. Mufungo Leonard Majura And 15 Others**, Civil Application No. 94 of 2016, CAT at DSM (unreported) at page 10 where the court cited with approval the case of **Lyamuya Construction Company Ltd Versus Board of Trustees of Young Women's Christians Association of Tanzania**, Civil Application No. 2 of 2010 where it was held that;

"(a) The applicant must account for the delay for the period of the delay.

(b) The delay should not be inordinate.

(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take,

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

Based on this, in line with the above cited authoritative case law, the court finds that the applicant's application has merits. It is granted as prayed. The applicant shall file the intended appeal within 30 days from the date hereof. Order accordingly.


M. G. MZUNA,

JUDGE.

26. 02. 2021