

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 17 OF 2020

(C/F District Land and Housing Tribunal of Arusha in Application No. 60 of 2006)

JEREMIAH ISSANGAYA1ST APPLICANT

HAGAI ELIA ISSANGAYA2ND APPLICANT

JOHN ELIA ISSANGAYA3RD APPLICANT

VERSUS

MALAKI LONGOSUA RESPONDENT

RULING

ROBERT, J:-

The Applicants herein seek to be granted an order for extension of time to file an appeal out of time against the Judgment and decree of the District Land and Housing Tribunal of Arusha in Application No. 60 of 2006. The application is supported by a joint sworn affidavit of the Applicants herein. The Respondent filed a counter affidavit opposing this application.

Briefly, the Applicants herein filed a suit against the Respondent at the District Land and Housing Tribunal of Arusha claiming ownership of landed property. On 27th April, 2017, the trial tribunal decided in favour of the Respondent. Aggrieved, the Applicants herein filed Land Appeal No. 17 of 2017 on 9th June, 2017 at the High Court. On 15th September, 2017 they noted a defect in the decree attached to the petition of appeal hence they prayed to withdraw the appeal with leave to refile. On 13th December, 2017 they wrote a letter to the District Land and Housing Tribunal requesting to be supplied with a proper decree and on 7th March, 2018 they were supplied with a copy of the proper decree. By then the time for appeal was already lapsed hence this application.

When the application came up for hearing before this court, Mr. Said Amri, learned advocate, appeared for the Applicants whereas Mr. Elipokea Malaki appeared for the Respondent under the power of Attorney. Parties prayed successfully to argue the application by way of written submissions.

Submitting in support of the application, Mr. Said Amri argued that, soon after the trial tribunal had delivered its judgment, they filed an appeal before this court, Land Appeal No. 17 of 2017. Then they realized that, the decree was signed by the Chairman who did not deliver judgment

and without writing if he is a successor Chairman or not. Having realized that, they decided to withdraw the appeal with leave to refile. They returned the defective decree to the tribunal for correction but despite their efforts to be supplied with a copy of decree timely they received a proper decree on 7/3/2018. At that time, the time to appeal had already lapsed. As a result, they filed an application for extension of time vide Misc. Land Application No. 43 of 2018 which was struck out on 20/11/2020 by Hon. Mzuna, J for wrong citation of the enabling provision. Consequently, they filed the present application on 6/3/2020 due to technical problems in the Judiciary Statistical Dashboard System (JSDS), a web application platform for Case Registration and Administration.

He submitted further that, Applicants had a right to be heard and a right to appeal against the decision of the court under Article 13 (6) of the Constitution of the United Republic of Tanzania. He noted that under Section 41 (1) and (2) of the Land Disputes Courts Act, Cap. 216 R.E 2002, an appeal from the DLHT to High Court is required to be lodged within forty-five days after the date of the decision or order. Furthermore, Section 19 of the Law of Limitation Act, Cap. 89 R.E 2002 provides that, in computing the period of limitation prescribed for an appeal, time requisite for obtaining a copy of the decree or order appealed from or

sought to be reviewed, shall be excluded. He submitted that, it was not the intention of the Appellants to be late on filing this appeal, it was contributed to by the trial tribunal for being late to supply them with a copy of a proper decree. He cited, among others, the case of **M/S Tanzania Wildlife Corporation vs. M/S Frida Mwijage**, Civil Application No. 2 of 2014 (unreported) where Luanda J. A held that; -

"In our case the reason for delay to file is that the applicants are yet to be supplied with the documents from the high court to enable them to file revisional proceedings. No doubt the reasons advanced is good cause to extend time. The application is granted as prayed."

Based on the reasons stated, the Applicants prayed for this court to exercise its discretion and extend the time to file an appeal out of time.

Opposing this application, the Respondent argued that, submissions made by the Applicants are based on new facts which were not pleaded in their joint affidavit. He noted that, while in their joint affidavit the Applicants had stated that they were supplied with the correct copy of the decree on the 7th of March, 2018, in their written submissions, the Applicants brought new facts to the effect that after being served with the correct copy of the decree from the Tribunal they filed Misc. Application

No. 43 of 2019 seeking leave to refile their Appeal out of time which was struck out on 20th November, 2019 after which they refiled the same application on 27th July, 2020 which was registered as Misc. Application No. 17 of 2020. The Respondent argued that it is a well-established principle that in an application for extension of time to file an appeal out of time, the reasons for delay must be pleaded in the supporting affidavit and not on submissions because submissions are not evidence. Therefore, the fact that before this application there was Misc. Application No. 43 of 2018 cannot form part of the reasons pleaded in support of the application ~~because it was not pleaded in the joint affidavit.~~ In support of his argument he referred the court to the case of **the registered Trustees of the Archdiocese of Dar es salaam**, Civil Appeal No. 143 of 2006 (unreported) at page 7 where it was held that reasons for failure to appeal on time must be given on an affidavit not on submissions, since submissions are not evidence.

He contended further that, the Applicants did not account for each and every day of delay as required by the Court of Appeal decision in the case of **Elfazi Nyatega & Others vs Caspian Mining Ltd**, Civil Application No. 444/08 of 2017 (unreported) where Mwarija J.A at page 10 held that;

"... the Applicant ought to have accounted for everyday of the delay"

He submitted that at para 5 of the Applicants' joint affidavit they stated that, they were served with the copy of the decree on 7th March, 2018 then they filed their application on 6th March, 2020 almost two years later without advancing any concrete reasons for their delay. Therefore, such lateness was attributed by the Applicants' carelessness and recklessness which cannot acquire a crown from this court.

He argued further that, even if it is assumed that the Applicant had filed Misc. Land Application No. 43 of 2018 on time and the same was struck out on 20/11/2019, still there are 3 months and 16 days from the date of Ruling to the date of filing this application which were unaccounted for by the Applicants. He also faulted the Applicants for relying on some new facts which were not pleaded in their joint affidavit by claiming to be late because of JSDS filing system.

He submitted further that it is the court's discretion to grant or refuse extension of time and that discretion needs to be exercised judiciously as clearly stated in the case of **MUMELLO vs BANK OF TANZANIA (2006) 1EA 227** where the court held that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause. He further cited the cases of **Alhaji**

Abdalah Twalib vs Eshakwe Ndoto Kweni Mushi (1990) T.L.R 108
and **Katuranature & Another versus Karegyera & 7 others (2007)**
EA 88 (CAU) in support of his argument.

He submitted that since no genuine reasons for the Applicant's delay were adduced in the Applicants' joint affidavit, the Applicants' are not entitled for consideration of their application.

Considering the authorities cited by the Applicants, he argued that the cited authorities are not relevant due to the following explanations: first, Art. 13 (6) (a) of the **Constitution of the United Republic of Tanzania** cited by the Applicants gives a proper way on how one may seek for his rights, that every right is accompanied with obligations. The Applicants were required to comply with time limits in order to exercise their right under the constitution. Secondly, the case of Dr. F.L. Masha cited by the Applicants is distinguishable from the circumstances of this case because it addresses a situation where there is a fault of the court while the matter at hand is about failure to account for delays. Thirdly, the Wildlife's case cited by the Applicants is also distinguishable since the filing was done within time as it was accompanied with a certificate of delay whereas in this matter there is a delay.

He therefore prayed for the application to be dismissed with costs.

In a brief rejoinder, the applicants' counsel insisted that they were not careless as they were late in filing an appeal due to late supply of the proper copy of the decree by the trial tribunal. He argued further that, it is not true that the Applicants did not account for each day of delay as the Applicants were in court corridors all the time to pursue their rights. He submitted that the Applicants have submitted genuine reasons to warrant this court to grant them extension of time to file an appeal out of time.

Having considered the rival submissions from both parties, I should pose here and make a determination on whether the Applicants have adduced sufficient reasons to warrant extension of time to file an appeal out of time.

According to section 41 (2) of the **Land Disputes Courts Act**, Cap. 216 R.E 2002 an appeal from the District Land and Housing Tribunal in the exercise of its original jurisdiction may be lodged to the High Court within forty-five days after the date of the decision or order. A proviso to this section gives the High Court, where there is a good cause, to extend time for filling an appeal either before or after the expiration of such period of forty-five days.

What amounts to a good cause for extension of time to file an appeal depends on the circumstances of each case. As a matter of principle, the Court of Appeal of Tanzania in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), provided the following guidance in determining if the Applicant had good cause for the delay:

- 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 the illegality of the decision sought to be challenged.

In the case at hand, the Applicants are inviting this court to make a finding that they have a good cause to warrant extension of time to file an appeal. In their joint affidavit, they stated that the decision now sought to be challenged was delivered on 27/4/2017 and they filed Appeal No. 17 of 2017 on 9th June, 2017 which was within the 45 days allowed by

the law. However, before the hearing of the appeal they realized that the decree was defective as it was signed by the Hon. Chairman who did not preside over the matter or deliver the Judgment. Consequently, they decided to withdraw the appeal with leave to refile and returned the decree to the trial tribunal for correction. However, by the time of receiving a rectified copy of the decree, which is 7/3/2018, the time to file an appeal had already lapsed hence they preferred this application. What is lacking in the Applicants' joint affidavit is an account of what happened for two years from 7/3/2018 when they received the rectified copy of the decree until 6/3/2020 when they filed this application for extension of time. That information is provided in their written submissions and not in their joint affidavit.

This court is in agreement with the argument made by the Respondent that, the Applicants ought to include information on what happened from the date of receiving the correct decree to the date of filing of this application in their joint affidavit as the Applicants' submissions is not evidence but a mere summary of arguments and cannot be used to introduce evidence.

This position is well stated in the case of **TUICO at Mbeya Cement Company Ltd Vs. Mbeya Cement Company Ltd and Another** (2005)

TLR 41 where the Court of Appeal said:

"It is now settled that submissions is a summary of arguments. It is not evidence and cannot be used to introduce evidence.

Guided by the authority above, this court considers the information stated in the Applicants' submissions in respect of what happened from the date of receipt of the rectified decree to the date of filing this application as a mere word from the bar and cannot be considered in this application. Consequently, this court finds that the Applicants have failed to account for each day of delay for a period of two years from the date of receiving the correct decree to the date of filing this application.

For the sake of argument, this court is equally in agreement with the submissions made by the Respondents that, even if the court had to consider arguments made in the Applicants' submissions, which do not form part of the evidence, the Applicants will be found to have failed to account for a period of three months from 20/11/2019 when Misc. Land Application No. 43 of 2018 was struck out on technical reasons to 6/3/2020 when the Applicants filed this application. Further to this, there

is no proof to establish that the Applicants failed to file their application timely due to JSDS filing system.

Guided by the reasons and authorities above, I find the present application seriously wanting in merit and I proceed to dismiss it with costs.

It is so ordered.

