

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB -REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 23 OF 2021**

*(Arising from land Appeal No. 240 of 2019 of Musoma District Tribunal)*

**DALMAS JONYO..... APPLICANT**

***VERSUS***

**MUSA SAMSON OGONJI..... RESPONDENT**

**RULING**

10<sup>th</sup> Septand 17<sup>th</sup> September 2021

**F.H. MAHIMBALI, J.**

This is an application for extension of time to file an appeal out of time. Its genesis is from the decision of Bugwema ward tribunal in land Application no. 9 of 2018 and Land Appeal no.240 of 2019 at Musoma DLHT. This application was filed by way of chamber summons made under section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019 (LDCA) and supported by the affidavit deposed by Dalmas Jonyo.

The applicant in his affidavit deposed that he was the appellant in Land Appeal no. 240 of 2019 at Musoma District Land and Housing Tribunal (DLHT). That on the 24/09/2002 the DLHT decided the appeal in favour of the respondent. He further deposed just after the delivery

of the said judgment, he wrote a letter (on 24/09/2020) so as to be supplied with the copy of the judgment and the copy was ready for collection on 03/11/2020. He stated that he thought the 60 days to appeal should have excluded the 03/11/2020 as per section 19(1) of the law of Limitation Act, Cap. 98 R.E 2002. Further to that, he deponed that he appealed on 30/11/2020 and he was time barred.

The respondent objected to this application through his counter affidavit and stated that it is not a requirement of law that the time used to obtain the copy of judgment should be excluded in computing time within which to appeal, since it originated from the ward tribunal. He went further to state that para 5 of the applicant's affidavit is strongly disputed as ignorance of the law is not sufficient ground to extend time. He also deponed that the applicant has failed to account for each day of delay, therefore the application should be dismissed,

At the hearing of this application, both the applicant and the respondent appeared in person, unrepresented. The matter was heard by way of audio teleconference.

The applicant asked the court to adopt his affidavit as part of his submission. Replying, the respondent too asked the court to adopt his counter affidavit as part of his submission and prayed that the

application should be dismissed with costs for want of sufficient legal cause.

Rejoining, the applicant reiterated that his application should be allowed as he had intention to appeal. In regards to online filing, lack of internet made him delay in filing his appeal on time. He prayed his application be allowed.

After considering the chamber summons, supporting affidavit and the counter affidavit. It is clear that the applicant was supposed to appeal within sixty days against the impugned judgment or order as per section 38 (1) of the Land Disputes Courts Act. Failure to comply with the above section, he has to obtain extension of time from the court which is judicial discretion and he has to establish “a good and reasonable cause”. (see; **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED [ 2006] TLR 235** at page 235).

It is settled that what amount to sufficient cause is not yet defined. However from decided cases a number of factors have to be taken into account, including whether or not the application has been brought promptly, the absence of any valid explanation for delay , lack of diligence on the part of the applicant (See **TANGA CEMENT**

**COMPANY LIMITED VS MASANGA AND AMOS A. MWALWANDA ,**  
Civil application No.6 of 2001).

However, there are factors that are used to determine whether the applicant has shown good and reasonable cause such as the length of the delay, whether or not the delay has been explained away, diligence on the part of the applicant and whether there is an illegality in the impugned decision (see; **Lyamuya Construction Company Limited vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported)). In addition, the applicant has to account for each day of delay.

One of the applicant's reasons for delay is that he was waiting to be supplied with the copy of judgment. According to the court's record the judgement was delivered on 24/9/2020 and he obtained the copy of the judgment on 03/11/2020 but filed it on 30/11/2020. This means that he was supposed to file his appeal on 22<sup>nd</sup> November, 2020 to be within time. Therefore, he is out of time for eight days. That means by the time he was supplied with the copy of judgment on 03/11/2020, he still had 19 days to file his appeal on time. He has not shown what prevented him on those days to file his appeal. By the way the manner he handled and doing the computation of time in filing his appeal,

suggests ignorance in it. It is settled that ignorance of the law has never been a good reason for extension of time (see **Hamimu Hamisi Totoro @ Zungu Pablo and 2 others vs The Republic**, Criminal Application No. 121 of 128 at page 5 and 6, **Hadija Adama v. Godbless Tumba**, Criminal Application No. 14 of 2013 (unreported), **Charles Machota Salugi v. Republic**, Criminal Application No. 3 of 2011 (unreported), **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 of 2015 (unreported) ,**ARS. Criminal Application No.4 of 2011 Bariki Israel vs The Republic;** and **MZA, Criminal Application No.3 OF 2011 – Charles Salugi vs The Republic**). To say the least a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be appraised of it for otherwise he/ she will have nothing to offer as an excuse for sloppiness.

Considering the ruling of this Court (Hon. Kisanya, J) in **Dalmas Jonjo (Administrator of the Estate of the late Zabron Jonjo Orale) V. Samson Owino**, Misc Land Appeal no.02 of 2021, HC Musoma while quoting the case of **Njumali Singo V. Meliyo Lovokieki**, Misc. Land Appeal No. 13 of 2019, HC at Arusha (both unreported) held that:

*"going through the provisions of the Land Disputes Courts Act, Cap 216, R.E 2002, I have found none of provision which*

*require the position of appeal to be accompanied by a copy of judgement or order of the ward tribunal. Hence assertions that the appellant was supplied with necessary documents late, to my view have no legal basis."*

In that regard, his reason is bankrupt of merit and it is as well dismissed.

Lastly but certainly not least, his reason for delay is that online filing of the appeal made him file it out of time as he had no internet. The applicant has not shown what action did he take when he faced the problem of internet. And he has not shown when exactly he was faced with that problem. This court would have loved to be sympathetic with the applicant but he is not specific on how the process was a hinderance for him to file his appeal timeous. This court will make an assumption that he might have faced technical problems or internet interruption. Yet, this court will be guided by rule 24(3) and (5) of Judicature and Application of Laws (Electronic Filing) Rules, G.N 148 of 2018 that stipulates as follows;

*24.(3) For the purpose of sub- rule (1), the excluded time shall not extend the limitation period for such filing under the Law of Limitation Act, or any other written law.*

*(5) Where party misses a filing a deadline due to technical problems referred to in sub- rule (1) the party shall move informally and ex parte to the Registrar or the magistrate in-*



*charge not later than 15:00 hrs of the following working day for appropriate relief.*

Nevertheless, the e-filing system is not applicable to appeals originating from the ward tribunal as filing as a matter of law in terms of section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2019.

All said and done all the reasons deposed by the applicant are bankrupt of merits as they failed to show good and reasonable cause and he has also failed to account for each day of delay. Therefore, this application is devoid of merits and it is dismissed with costs.

It is so ordered.

DATED at MUSOMA this 17<sup>th</sup> day of September, 2021.



F. H. Mahimbali

JUDGE

17/09/2021

**Court:** Ruling delivered this 17<sup>th</sup> day of September, 2021 in the Absence of the Applicant, but in presence of the Respondent and Miss Neema P. Likuga – RMA.

F. H. Mahimbali

JUDGE

17/09/2021