

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MUSOMA - SUB REGISTRY**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 93 OF 2021**

*(Arising from land Appeal No. 82 of 2018 of the District Land and Housing Tribunal  
of Tarime at Tarime)*

**THETHE KISOKU..... APPLICANT**

***VERSUS***

**INCHA MESTHI ..... RESPONDENT**

**RULING**

31<sup>st</sup> August and 20<sup>th</sup> September 2021

**F.H. MAHIMBALI, J**

This is an application for extension of time to file an appeal out of time. It traces its genesis from the decision of the District Land and Housing Tribunal for Tarime at Tarime in Land Appeal no. 82 of 2018. This application was brought by way of chamber summons predicated under section 38(1) of the Land Disputes Courts Act, CAP 216 R.E. 2019 and supported by an affidavit of Thethe Kisoku.

The applicant in his affidavit deponed that he had unsuccessfully appealed before the District Land and Housing Tribunal (DLHT) of Tarime against the decision of the Ward Tribunal. He desired to appeal against the decision of the DLHT to this Court, however he found

himself being out of time. Thus, the basis of this application to this Court now is seeking for an extension of time against the decision of the District Land and Housing Tribunal (DLHT). The reasons as to why he failed to file his appeal on time are contained in his affidavit in which he prayed this court to adopt. In essence, the reasons contained in his affidavit are mainly two; One, that he was deserted by his wife one Mwainne Thethe leaving him alone with two minor children (Mwita Thethe, 6 years and Dorica Thethe, 4 years) to attend. Two, that as he was dealing with that problem, he deposed that he was also assaulted by the respondent's sons until he became unconscious. In the course of dealing with these two incidents, it is the reason of his delay of filing his appeal to High Court and that these reasons were beyond his control. He thus prayed that his application be allowed as the intended appeal has a prospective chance of success.

The respondent objected to this application through his counter affidavit and stated that the applicant has legally speaking failed to account for each day of delay for his application to be accorded legal weight as prayed.

At the hearing of this application, both the applicant and the respondent appeared in person and unrepresented.

They both asked the court to adopt their affidavit and counter affidavit respectively as part of their submissions and they had nothing more to add. Having considered the chamber summons, supporting affidavit and the counter affidavit, it is clear that the applicant was supposed to appeal within sixty days after the impugned judgment or order as per section 38 (1) of the Land Disputes Courts Act. When a party does not lodge his appeal on time, he has to apply for extension of time as per law. Since an extension of time is not absolute right, it's upon judicial discretion which has to be exercised judiciously. However to do so there must accounted reasons for that. In **Mbogo Vs. Shah (1968) EA** the defunct Court of Appeal for Eastern Africa held:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time....."*

The only known acceptable ground for an application on extension to be granted is for the party seeking for it to establish "*good and reasonable cause*". This was held in the case of **KALUNGA AND COMPANY ADVOCATES VS NATIONAL BANK OF COMMERCE LIMITED [ 2006] TLR 235** at page 235 where the Court of Appeal states;

*(i)...the court has a wide discretion to extend time where the time has already expired, but where there is inaction or delay*

*on the part of the Applicant, there ought to be some kind of explanation or material upon which the court may exercise the discretion given."*

It is settled that what amounts to sufficient cause is not clearly defined. In the case of **TANGA CEMENT COMPANY LIMITED VS MASANGA AND AMOS A. MWALWANDA**, Civil application No.6 of 2001 it was held;

*"What amounts to sufficient cause had not been defined. 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."*

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. The above factors were also stated in the famous case of **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.

In the case of **Charles Pantaleo Kingoka Vs. Abasa Musa Kitoi – Civil Application no.71/76 of 2019**, the Court of Appeal said:

*"There must be an account of each day of delay. Delay even of a single day, has to be accounted for"*

In **Selemani Juma Massala Vs. Sylvester Paul Mosha & Japhet Matiku Lyoba – Civil Application no. 210 of/01 of 2017** – un reported, the Court of Appeal stated at page 11.

*"The settled position of the law is that, if there is a delay of any act, then each day of the delay has to be accounted for. Otherwise, there was no need of having such rules"*

In the case at hand, the applicant's reasons for extension of time are that his wife abandoned him together with his two children. He states in his affidavit that he reported the matter to the hamlet chairman and he alleged that he attached annexure "A". But the annexure is not with the court's records. The applicant has not stated in his affidavit as exactly when he was abandoned as per the affidavit. Since the court records establish that his appeal at the DHLT was dismissed on 21<sup>st</sup> March, 2019, it was expected from him that he accounted for each day of delay after the expiration of 60 days as to why he filed the application now in lieu of the desired appeal.

In his deposed affidavit, the applicant avers as another reason for delay that he was assaulted by the sons of the respondent. This averment is stated without further details as to when exactly he was assaulted. Additionally, he claimed he went to the police station and later there was criminal case no. 237 of 2019 at Tarime urban Primary court.

From his reasons, it is my humble view that he has not accounted for each day of delay as per law. As the judgment of the DLHT was on 21<sup>st</sup> March, 2019 and his application was filed on 21<sup>st</sup> December, 2020, this means that he filed his application after one year and six months, while he was supposed to file after the expiration of 60 days. Thus, he is one year late. He is supposed to account for each day from 22<sup>nd</sup> day of May, 2019 to 21<sup>st</sup> of December 2020. Gathering from his affidavit, he has not accounted for those days as legally required. However, as he was able to go to the hamlet chairman and instituted a criminal case, it is my humble view he could also use that time to file his appeal on time. Any choice has a consequence, the applicant choice of instituting a criminal case first against the sons of the Respondent and looking for his lovely wife from whom he was deserted. By the way, being abandoned by his wife is not a good and sufficient reason as per circumstances of this case to warrant delay of filing one's appeal in court, but sickness,

bereavement and other serious misfortunes which leave one with no other option but attending it at the particular matter. Considering the fact that there are so many single parents conducting their daily activities as usual, this court finds that the applicant, has legally speaking not shown any good and sufficient cause for the court to grant his application as he has failed to account for each day of his day.

In fine, this application is dismissed for want of merits with costs.

It is so ordered.

DATED at MUSOMA this 20<sup>th</sup> day of September, 2021.



  
F. H. Mahimbali

JUDGE

20/09/2021

**Court:** Ruling delivered this 20<sup>th</sup> September, 2021 in the presence of both parties and Mr. Kelvin S. Rutalemwa – RMA.

  
F. H. Mahimbali

JUDGE

20/09/2021