

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**MISC. LAND APPLICATION NO. 26 OF 2020**

*(Originating from the decision of the District Land and Housing Tribunal for  
Kiteto in Land appeal no 9 of 2019 Originating from Partimbo Ward Tribunal  
Land Case No. 14 of 2018)*

**EDWARD OTESOI ..... APPLICANT**

***Versus***

**MAINGWA MARIO ..... RESPONDENT**

**RULING**

***11<sup>th</sup> May & 2<sup>nd</sup> July, 2021***

**MZUNA, J.**

**Edward Otesoi** (the applicant herein) has brought this application under section 38(1) of the Land Dispute Courts Act Cap 216 [R.E 2019] seeking for extension of time to appeal to this court against the judgment and decree of The District Land and Housing Tribunal for Kiteto, dated 12/9/2019 in Land Appeal No 9 of 2019. The application is supported by an affidavit deposed by the applicant himself. The respondent **Maingwa Mario** on the other hand contested the application through a counter affidavit deposed by himself.

It was agreed by both parties that hearing of this application be conducted through filing written submissions. The applicant was represented by Mr. Alute Simon Mughwai learned advocate, while the respondent had the services of Mr. Mathias Nkingwa, learned advocate.

Submitting on the substance of the application, Mr Mughwai adopted the applicant's affidavit and sought reliance on the same. He contended that under paragraph 8 of the applicant's affidavit, initially the applicant preferred an appeal on time which was then struck out. Under paragraph 10 of the applicant's affidavit he stated that there is a legal point which he named that was wrongly decided by first Appellate Tribunal, which needs intervention of this Court. He added that in order to be granted extension of time the applicant has to show that the delay was with sufficient cause. To support his contention, Mr. Mughwai cited the case of **Wambele Mtumwa Shahame Vs. Mohammed Hamis**, Civil Reference No. 8 of 2016 (unreported). Mr. Mughwai maintained that the Appeal No. 36 of 2019 was filed in this Court in time, save that it was found incompetent and hence struck out. That is referred to as technical delay which amounts to sufficient cause for extending time. To support his averment, Mr. Mughwai cited the following decisions: **Fortunatus Masha Vs. William Shija and Another** [1997] TLR 154 and **A1 Outdoor Tanzania Ltd and Another Vs. Alliance Media Tanzania Ltd**, Civil Application No 178 of 2008 (unreported).

Mr. Mughwai insisted that the applicant was not idle he acted immediately by writing a letter to this Court requesting to be supplied with copies of the ruling and drawn order that struck out his appeal. He received such copies on 23/4/2020 and that he prepared the application and the same was filed on 29/4/2020, 6 days

after being supplied with the copies of the ruling and order. According to Mr. Mughwai, there is no prejudice that will be suffered by the respondent if extension of time is granted unlike the applicant if the same is not extended. That the applicant stands to suffer irreparably if this application is not granted.

Further, Mr. Mughwai submitted that there are illegalities in the decision sought to be challenged. He maintained that existence of illegality in the impugned decision acts as sufficient cause for extending time, citing the decision in case of **The Principal Secretary, Ministry of Defence and National Service Vs. Devram Vallambhia** [1992] TLR 185. Basing on the above submission, Mr. Mughwai prayed that the application be allowed with costs.

Contesting the application, Mr. Nkingwa submitted that the Court has discretion to extend time but in granting such extension, good cause must to be shown and that the applicant must account for each day of such delay which the applicant has failed to do. Mr. Nkingwa cited the case of **Kalunga and Company Advocates Ltd vs National Bank of Commerce Ltd** [2006] TLR 235. He also cited section 38(1) of the Land Disputes Courts Act, Cap 216 [R.E 2019]. He maintained that good cause is defined in the case of **The Attorney General Vs. Tanzania Ports Authority and Another**, Misc. Civil Application No. 87 of 2016 (unreported). In his view, the applicant has not accounted for each day of delay as stated in the case of **Bariki Israel Vs. Republic**, Criminal Application No. 4 of

2011 (unreported). Based on the above reasons, Mr. Nkingwa submitted that the application is baseless and should therefore be dismissed with costs.

I have given deserving weight to the submissions of the learned counsel for the parties together with the parties' affidavit and counter affidavit. The main issue is whether sufficient cause has been shown warranting the grant of extension of time sought.

I need to state at the outset that sufficient cause for grant of extension of time is a condition precedent before granting application for extension of time. Such discretion however, has to be exercised judiciously. There are plethora of authorities to that effect. The case of **Lyamuya Construction Company Limited Vs. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) is instructive in this respect. It was held *inter alia* that:

*"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated:*

- a) The Applicant must account for all the period of delay;*
- b) The delay should not be inordinate;*
- c) The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take; and*

*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."*

In the application under scrutiny, Mr. Mughwai contended that the applicant filed Misc. Land Appeal No. 36 of 2019 in this Court on time. That appeal was found incompetent thus dismissed. The said appeal was struck out on 31/3/2020, for being preferred in a Memorandum of Appeal instead of Petition of Appeal. As rightly contended by Mr. Mughwai and as the record speaks, it is true that Misc. Land Appeal No. 36 of 2019 was filed in time in this Court, but it was struck out for some technical reasons. That is what is referred in law as technical delay, which is excusable.

Technical delay is a sufficient cause for extension of time. I am fortified by the cited case of **Fortunatus Masha** (supra), which held:

*"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."*

It is therefore my finding that the applicant was prevented from filing the appeal to this Court to due to technical reasons which are explainable and

excusable. For the purposes of the extension of time, this reason alone suffices the granting of the extension of time sought.

Further, as deponed in the applicant's affidavit, soon after the appeal was struck out, the applicant's counsel wrote a letter requesting to be supplied with the copy of the ruling and drawn order. Under paragraph 7 of the affidavit, he stated that he was supplied with the documents on 23/4/2020. Although the drawn order does not contain the issuance date as rightly contended by Mr. Nkingwa, yet the respondent's advocate did not specify the date he contends that the copies of the ruling and drawn order were issued to them and therefore ready for collection. Therefore, I do not find reasons not to believe the applicant's counsel that the copies were issued to them on 23/4/2020. This application was filed on 29/4/2020, which is six days from the date the copies of the ruling and drawn order were availed to the applicant. In the circumstances, the delay is not inordinate. There is no laxity on the part of the applicant, as he acted promptly. Therefore, he accounted for the delay.

Mr. Mughwai also amplified that there is an illegality in the decision sought to be appealed against. He has, however, argued the grounds of the intended appeal, which as a matter of law I am not in a position to say a word regarding those grounds, since they will be determined in the intended appeal if extension of time is granted.

The question of merits or otherwise of the intended appeal cannot be the basis of grant of extension of time. I say so because determining the merits of such application at this stage is tantamount to acting prematurely. It was held in the case of **Zahara Kitindi and Another vs. Juma Swalehe & 9 Others** Civil Application No. 142/05 of 2018 (CAT) at Arusha (unreported) citing with approval the case of **Regional Manager –TANROADS Lindi vs. D.P Shapriya and Company Ltd**, Civil Application No. 29 of 2012 (unreported) a decision which was also applied in the case of **Victoria Real Estate Developmnt Limited vs. Tanzania Investment Bank and Three Others**, Civil Application No. 225 of 2014 (unreported) where the court cautioned that:-

*"...it is now settled that a Court hearing an application should refrain from considering substantive issues that are to be dealt with by the appellate Court. This is so in order to avoid making decisions on substantive issues before the appeal itself is heard..."*

The above decision would equally apply in this application where the applicant seeks for extension of time to appeal to this court.

What I am tasked is determination whether to grant extension of time or not. In other words, the alleged illegality is not made apparent. The decision of the Court of appeal in **Samwel Munsiro Vs. Chacha Mwikwabe**, Civil Application No. 539/08 of 2019 is instructive, as it was held that:

*"As often stressed by the Court, for this ground to stand, the illegality subject of challenge must clearly **be visible on the face of the record, and the illegality in focus must be that of sufficient importance**" (emphasis added)*

In the instant application, the alleged illegality is not made apparent. As I have intimated earlier on, the application succeeds on the ground that the delay is a technical delay.

That said, I hereby grant the applicant 21 days within which to file his intended appeal. Application granted with no order for costs.

Order accordingly.



**M. G. MZUNA,**  
**JUDGE.**  
**July 02, 2021**