

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS LAND APPLICATION NO. 27 OF 2022

*(Originating from Kyela District Land and Housing Tribunal in Land
Application No. 21 of 2015)*

IDA CHARLES APPLICANT

VERSUS

BOARD OF THE REGISTERED TRUSTEES OF

ROMAN CATHOLIC DIOCES OF NJOMBE..... RESPONDENT

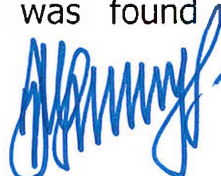
RULING

Date of last order: 6th July 2022

Date of ruling: 28th July 2022

NGUNYALE, J.

The respondent preferred Land Application No. 21 of 2015 in the District Land and Housing Tribunal for Kyela at Kyela, the said application was heard and determined on 3rd January 2020 in favour of the respondent. The applicant was not satisfied with the decision of the Tribunal, she therefore preferred Land Appeal No. 3 of 2020 in this Court. The appeal was not determined on merit, it was found to be incompetent



consequently it was struck out. After the matter was struck out the applicant was advised to rectify the defects and refile the appeal subject to the time limitation.

Because the applicant was still aggrieved, he preferred this application under section 41 (2) of the Land Disputes Courts Act Cap 216 R. E 2019 seeking extension of time within which to lodge an appeal out of time. The application was supported by an affidavit dully sworn by Ladislaus Rwekaza who the applicant kindly instructed him to represent and swear an affidavit for her.

Mr. Ladislaus Rwekaza learned Counsel for the applicant deponed at paragraph 13 of an affidavit that on the 31st day of March 2022 the applicant was supplied with correct copies of the judgment and decree. And para 14 he stated that pleadings, proceedings as well as the impugned judgment of the trial tribunal is tainted with serious illegalities and irregularities which the intervention of this Court is necessary on appeal. Upon the said judgment of the Court, the applicant found herself out of time hence the present application for extension of time. He further stated in the affidavit;

16. that from 17th day of February 2020 when the previous memorandum of appeal was filed in Court up to 3rd day February 2022 when the judgement and



decree was delivered to parties making the total number of 714 days the applicant was prosecuting an incompetent Land Appeal No. 21/2015 before this Court, thus led to technical delay.

17. That, the rest days from 4th day of February 2022 to 6th day of April 2022, the total number of 60 days, used by the applicant for waiting the proper documents to wit, judgment and decree of both the High Court and the trial Tribunal, and 5 days out of 60 days for preparation of the present application for extension of time.

The respondents resisted the application through a counter affidavit sworn on 24th day of May 2022 by Felix Kapinga Counsel for the respondent. Stating that the trial Tribunal supplied the applicant with judgment and decree which were not the ones delivered by the trial tribunal.

The application was heard by written submissions. The Court is thankful for the timely filing of the respective submission per the scheduling order of the Court.

The applicant under the service of Ladislaus Rwekaza learned Counsel submitted that the application is brought under section 41 (2) of the Land Disputes Courts Act Cap 216 R. E 2019 praying for the Court to exercise its discretionary powers to enlarge time for the applicant to file appeal out of time. The very provision provides; -

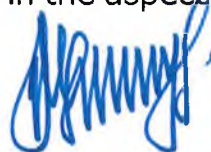
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*An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: **Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days.***

The applicant prayed the Court to grant extension of time under the principle of technical delay, he was of the view that the averments of paragraph 16 which has been quoted herein above established technical delay. Paragraph 17 of the affidavit which has also been quoted above covers sixty days which he spent waiting for proper documents and five days out of sixty days for preparation of the present application for extension of time.

On the point of technical delay he cited the case of **Victor Rweyemau Binamungu vs. Geoffrey Kabaka & Another**, Civil Application No. 602/08 of 2017, Court of Appeal of Tanzania at Mwanza (unreported) in which it was stated that the period spent in Court prosecuting the revision which was struck out acquire the name of technical delay which cannot be blamed.

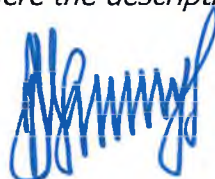
In the other ground the applicant submitted that she seeks extension of time to file an appeal out of time, like in the aspect of chances of success,



the applicant at paragraph 14 of the affidavit alleges serious illegalities and irregularities tainted with the pleadings, proceedings and judgement of the trial Tribunal. He was of the view that irregularities go to the root of the matter so he deserves extension of time. Among the irregularities he cited Regulation 3 (2) (b) of the GN. No. 174 of 2003 requires the applicant to disclose the address and or location of the suit land, however application No. 21 of 2015 which was filed before the trial Tribunal by the applicant disclose nothing as regard to the suit land location and or demarcations contrary to the mandatory requirement of Regulation 3 (2) (b).

The applicant relied to the case of **Daniel Dagala Kanuda (As Administrator of the Estate of the late Mbalu Kushaha Bulunda) Vs Masaka Ibeho & 4 Others**, Land Appeal No. 26 of 2015, High Court of Tanzania at Tabora (unreported) while emphasizing the importance of Regulation 3 (2) (b) of the GN. No. 174 of 2003 whereby his lordship Utamwa, J (as he then was) had this to say at page 6 of the judgment that; -

"... The legal requirement highlighted above is indeed intended for the purpose of an authentic identification of the land in dispute so as to afford courts make certain and executable order, it is the law that Court's orders must be certain and executable it follows thus that where the description of the land in dispute



is uncertain it will not be possible for the Court to make any definite order and execute it ..."

At the end he prayed the Court to grant the application.

The respondent under the service of Mr. Felix Kapinga learned Counsel started his submission by praying the Court to adopt his counter affidavit and form part of his submission. He referred to basic principles to be considered in granting extension of time as laid in the famous case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Arusha (unreported). He stated that the basic principles to be considered before granting an application for extension of time is accounting for each day of delay and existence of point of law of sufficient importance such as the illegality of the decision sought to be challenged.

Mr. Kapinga submitted that the period of delay of sixty days (60) between the day of judgment which struck out the original appeal till date of filing the present application were not accounted for. The affidavit of the applicant could not state or attach letters of praying for copy of judgment of the High Court and of the Tribunal. Also, the same affidavit does not show when the copies of the judgment were supplied to them and there

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is no affidavit of any officer of the Court or tribunal swearing that he or she supplied the documents on 30 March 2022.

On the allegation of illegality to the impugned decision the respondents submitted that the decision of the trial Tribunal is tainted with illegality they were of the view that the purported illegality has not been shown on the face of record. However, while, expounding the point in her submission; the applicant insisted that the respondent did not describe the disputed land as per the provision of the law. He submitted that meanwhile they had a simple meditation which led to the principle propounded in the case of **Samwel Munsiro versus Chacha Mwikwabe** Civil Application No. 539 of 2019 whereas the case of **Lyamuya Construction Company Limited** (supra) was quoted. In that case, the Court said that:-

"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambhia's case the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of

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jurisdiction, (but) not one that would be discovered by a long-drawn argument or process."

It was the view of the respondents that the point of illegality was not established and the issue of location was resolved during the visit locus in quo, therefore, the applicants have failed to establish the point of illegality which is apparent on the face of the records. The said description of the location of the land were succinctly described by the trial Tribunal when visited locus in quo.

Having read the records of the trial Tribunal, the contents of the affidavit and the rival submission I think the important issue to be answered is whether the applicant has demonstrated sufficient cause to warrant the Court to grant extension of time for her to be availed a right to be heard on appeal or not. It is a rule of law that sufficient cause must be demonstrated. The crucial issue, therefore, is "sufficient cause." While considering, it is better to ask: what amounts to sufficient cause? In the case of **Tanga Cement Company Limited v. Iumanne D. Masangwa and Amos A. Mwalwanda** - Civil Application No.6 of 2001 (unreported), it was stated

"What amounts to sufficient cause has not been defined. From decided cases a number of factors has to be taken into account, including whether or not the



application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant."

In the case of of **Lyamuya Construction Company Limited** (supra) as cited by the respondents Counsel among other things it insists that sufficient cause includes accounting for each day of the delay.

In the case at hand it is clear that the applicant filed Land Appeal No. 3 of 2020 on time but unfortunately it was struck out for being incompetent.

The same was filed on 17th February 2020 and it was struck out on 3rd February 2020 as correctly stated under paragraph 16 of the affidavit of the applicant. This period when the applicant was in Court corridors prosecuting the first appeal is considered to have been accounted for under the principle of technical delay as submitted by the applicants' learned Counsel. The case of **Victor Rweyemau Binamungu vs. Geoffrey Kabaka & Another** (supra) as cited by the applicant is relevant in establishing the principle of technical delay, the period used to prosecute the appeal which was struck out cannot be blamed.

Under paragraph 17 of the affidavit the applicant counsel deponed that the period from 4th February 2021 after the first appeal was struck out until 5th day of April 2022 when the present application was filed is a duration of 60 days. It was the submission of the applicant that such period he used for waiting the proper documents to wit, judgment and

decree of both the High Court and the trial Tribunal, and 5 days out of 60 days for preparation of the present application for extension of time. The averments have been strongly contested by the respondent that such period was not accounted for because he did not state when he was availed the same and no letters of requesting were stated in the affidavit. In my view I think it is in public domain that the previous Land Appeal No. 03 of 2020 was struck out because the applicant was served with incorrect documents from the trial Tribunal for appeal purposes. In pronouncing the order of striking out the Court stated inter alia; -

"I therefore hold that the appeal before me is incompetent and the remedy available is to strike it out as I do. I hereby strike out the appeal. the appellant is advised to obtain proper documents required for appeal from tribunal for appeal purpose and proceed with appeal process if she so wishes subject to the limitation of time."

Guided by the above stance in my view the applicant needed time to obtain those correct documents from the Tribunal, the fact that he was served by the incorrect documents still is not the fault of the applicant in case one asks; who issued incorrect documents? And who was to correct those defects? By any means the Tribunal was responsible for the fault and for rectifying the same. Considering the circumstance of the matter I agree with the averments of the applicant Counsel that such period of time was used accordingly to seek proper documents and to file the



present application. Lack of diligence has not been established; the applicant has demonstrated sufficient cause.

The point of illegality should not take the time of the Court, the same has not been established to be apparent on the face of the records, it needs a deep scrutiny from the records. It needs to scrutinize as to whether visit locus in quo can resolve the issue of non-disclosure of the location of the land with its boundaries.

As a whole then, and for what has been endeavoured above the applicant has demonstrated sufficient cause for the Court to grant extension of time for her to appeal out of time. The application is granted, the applicant is given thirty (30) days from today for appeal purpose out of legal prescribed time.

Dated at Mbeya this 28th July 2022.



D. P. Ngunyale
Judge