

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

MISC. LAND APPLICATION NO. 57 OF 2021

(C/f Application No. 148 of 2010 District Land and Housing Tribunal for Arusha at
Arusha)

AMINA JUMANNE MBERESERO APPLICANT

VERSUS

JUMANNE MOHAMED1ST RESPONDENT

ARTHUR FIDELIS MUSHI 2ND RESPONDENT

NANGE AUCTION MART &

DEBT COLLECTOR 3RD RESPONDENT

RULING

13/06/2022 & 01/08/2022

KAMUZORA, J.

The Applicant preferred this application seeking for extension of time to appeal to this court against the decision of the District Land and Housing Tribunal (the tribunal) of Arusha in Application No. 148 of 2010 that was delivered on 7th June, 2021. The application was brought under the provision of section 38(1) of the Land Disputes Courts Act, Cap 216 R.E 2002 and section 14 of the Law of Limitation Act [Cap 89 R.E 2019] and supported by an affidavit sworn by the Applicant herself. The

application is strongly opposed through the counter affidavit deposed by the 2nd Respondent.

When the matter was called for hearing the Applicant enjoyed the service of Mr. Richard Manyota, learned advocate while the Respondent enjoyed the service of Mr. Fortunatus Mhalila, learned advocate. The hearing of the application proceeded orally.

The brief background leading to this application is that, the Applicant sued the Respondents in the District Land and Housing the Tribunal (the trial tribunal) claiming a house located at Sokon 1 which was sold by the 1st Respondent (the Applicant's husband) to the 2nd Respondent. The Applicant claimed that the house in question was wrongly sold by the Applicant as it is a matrimonial property. The trial tribunal declared the 2nd Respondent the lawful owner of the house in dispute. Dissatisfied, and as the time to appeal had already lapsed, the Applicant preferred this application seeking an order of this court enlarging time to appeal. The main issue calling for the determination by this court is whether the Applicant has demonstrated sufficient reasons for the delay.

Submitting in support of the application, the counsel for the Applicant adopted the Applicant's affidavit filed in support of the

application and argued that, the decision of the DLHT was delivered on 07/06/2021 but the copies were supplied to the parties on 21/06/2021 as per page 9 of the trial decision. That, the delay by the Applicant in filing the appeal before this court was due to the delay in receiving the copy of judgment from the DLHT as the same was supplied on 5/8/2021 when 45 days had already lapsed. That, the Applicant filed this application as she was late for 8 days because she was looking for legal service. That, when she visited the office of Legal and Human Rights centre (LHRC) at Arusha, it was discovered that she was out of time to appeal. The counsel insisted that, the Applicant was not slopy in pursuing her rights as on 13/8/2021 she filed the present application and on 16/8/2021 the application was registered in court.

The other reason adduced by the counsel for the Applicant for the grant of extension of time is that the decision by the DLHT is tainted with illegality as the chairman of the tribunal failed to identify the meaning of presumption of marriage as there was no consent from the Applicant to allow the 1st Respondent to sell the house to the 2nd Respondent. That, failure of the chairman of the tribunal to consider the Applicant's evidence denied her right to be heard. The Applicant's counsel prays for the application to be allowed.

Contesting the application Mr. Mhalila argued that, it is the requirement of the law that where there is delay, the Applicant has to account for each day of the delay. He was of the view that, the Applicant has failed to account for the delay of 8 days. To cement his argument, he cited the case of **Hamis Babu Bally vs. The Hudicial Officer Ethics Committee and 3 others.**

Responding to the reason that the delay was due to the lateness in receiving copies of judgment from the DLHT, Mr. Mhalila submitted that, the copies of judgment were ready for collection on 21st June 2021 when it was certified and if the Applicant was negligent in collecting the same that cannot be an excuse for the delay.

Regarding the reason that the Applicant was looking for legal assistance the counsel for the Respondent submitted that, the same is an afterthought as it was not stated in the affidavit filed in support of the application. He added that, the advocate who was representing the Applicant at the trial tribunal is the same advocate representing her in this application hence, that reason should not be regarded by the court.

Regarding the reason for illegality, Mr. Mhalila replied that, he is aware that where there is illegality it is a sufficient cause to grant extension of time. He however stated that, in the present case, there is

no any illegality warranting the extension of time as the same must be on face of record. He added that, failure of the chairman to state that the house was a matrimonial property does not fall under illegality as the record shows that the 1st Respondent obtained the house before he got married to the Applicant. Regarding the argument that the evidence by the Applicant was not considered in composing judgment, Mr. Mhalila submitted that, the same does not amount to an illegality hence should not be regarded. He concluded by a prayer that the application should not be allowed.

In a rejoinder submission Mr. Manyota submitted that, the counsel for the Respondent has not stated the law which is required to account for each day of the delay. He was of the view that, the extension of time is the discretion of the court to be exercised judiciously by observing the principle of natural justice which is a right to be heard and fair trial hence urged this court to apply the decision in the case of **Hamis Babu Bali**. On the argument that he was the same advocate who represented the Applicant at the trial tribunal, Mr. Manyota replied that, an advocate needs to be instructed before he can go to the court. On the issue of illegality, he submitted that the same is reflected at paragraphs 6 and 7 of the affidavits which needs court determination.

From the submission by the parties and the affidavit of the parties, the pertinent issue is whether the Applicant has adduced sufficient reasons for extension of time. The grant of extension of time is a matter of discretion of the court, the discretion which however must be exercised judiciously. In **Mbogo Vs. Shah [1968]** EA 93, certain factors were highlighted to assist the court in deciding to either grant or refuse to grant extension of time. It was held that: -

"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay/ whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended".

The Court of Appeal of Tanzania also formulated the guidelines to be considered in granting the extension of time in the case of **Lyamuya Construction Company Limited V Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (Unreported). The court held that: -

"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 case at hand, the Applicant has relied on two reasons for the extension of time as depicted under the Applicant's affidavit in support of the application, one being technical delay that is, the delay by the trial tribunal to avail him with copies of the decision sought to be impugned and the second reason is illegality of the trial tribunals judgment. The reasons that the Applicant's delay was due to the fact that she was seeking for legal service was not pleaded in the Applicant's affidavit hence it will not be regarded.

On the issue of technical delay, the Applicants' counsel demonstrated the reasons for the delay in filing the appeal on time. Based on the affidavit in support of the application and the submission by the counsel for the Applicant, the following were observed. The judgment of the trial tribunal was pronounced on 07/06/2021 and the current application was filed by the Applicant on 13/08/2021 and

received by the Deputy Registrar on 16/08/2021 as per the official stamp inserted on the Applicant's application.

It is a firm stand by this court that, the time spent for obtaining a copy of judgment, ruling or decree by the parties or order sought to be impugned shall be excluded in the computation of time limitation. This was also the position of the Court of Appeal **in Alex Senkoro and 3 others Vs. Eliambuya Lyimo (As Administrator of the Estate of Fredrick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 CAT (unreported) where it was held:

'We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time.'

Based on the above argument and the holdings of the Court of Appeal, the time requisite needed in obtaining the certified copies of judgment and decree are to be excluded in computation of time. The Applicant upon obtaining a copy of judgement on 21/06/2021, she lodged this application praying for extension of time to appeal on 13/8/2021. If excluding the time used to obtaining the copies, then the

Applicant was late in filing this application for 8 days as well captured by the counsel for the parties. The Respondent was of the view that the Applicant did not account for days of delay.

As it was so propounded in numerous decisions, a delay of even a single day, has to be accounted for, otherwise, there would be no need of having rules prescribing periods within which certain steps have to be taken. As stated earlier that the Applicant was availed with the certified copy of the trial tribunals judgment on 21/06/2021 and as this application for enlargement of time was made on 05/08/2021. The affidavit does not show what the Applicant was doing after she had received copies of the decision from the lower tribunal. I understand that the law does not impose responsibility to the Applicant to account for the time she was still in time to appeal but at least the law requires the Applicant to account clearly the days of delay and state why she could not take action for that period.

The Applicant admit delay in filing the appeal for 8 days but did not state what she was doing for that period of 8 days which made her not to file the appeal or the application for extension of time. Based on the principle that each of delay must be accounted, I find that the Applicant was unable to give explanation of the 8 days of delay.

The second reason adduced by the Applicant is illegality of the decision issued by the trial tribunal. The Applicant alleged that the trial tribunal failed to consider the evidence by the Applicant revealing that the house in question was a matrimonial property and it was sold without the consent of the Applicant. The Respondent's counsel insisted that the illegality must arise on the face of record and in this matter, he could not encounter any illegality in face of record.

The issue as to whether the house in question was a matrimonial property was one of the issues raised for the determination at the DLHT. The tribunal made a clear finding that the house in question was not a matrimonial property as it was obtained by the Applicant's husband before their marriage. In my view, the Applicant was not satisfied by such a determination. The issue on the legality of sale is a legal matter and it needs court determination to see if it was properly determined. In my conclusion, the illegality complained of is seen on the face of record hence a reason for the grant of extension of time.

In the final analysis, although the Applicants' delay in filing the appeal was not reasonably explained, I find that there is legal issue to be determined by the court which warrant the extension of time. In considering the decision in the case of **Benedict Shayo Vs**

**Consolidated Holdings Corporation as Official Receiver of
Tanzania Film Company Limited, Civil Application No. 366/01/2017,**

I do not see how the Respondent will be prejudiced by the grant of extension of time.

The application is therefore granted. The Applicant is allowed to file her appeal within fourteen (14) days from the date of this ruling. No order for costs is made.

DATED at ARUSHA this 01st day of August, 2022.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over the printed name.

D.C. KAMUZORA

JUDGE

