

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

**MISC. LAND APPLICATION NO. 3 OF 2022**

(Emanating from Appeal No. 6/2013 in the District Land and  
Housing Tribunal for Rungwe and originating from Land Case No.  
9/2012 at Kandete Ward Tribunal)

**TUMBOMBELEGE NDEMANGE.....APPLICANT**

**VERSUS**

**GULILA KAHABALA.....RESPONDENT**

**RULING**

*Date of last Order: 04.07.2022*

*Date of Ruling: 06.09.2022*

**Ebrahim, J.**

In essence this is the third application for extension of time from the Applicant to file an appeal against the decision of the against the decision of the District Land and Housing Tribunal in respect of Land Appeal No. 9/2012.

The Applicant had first filed the similar application in this court vide Misc. Land Application No. 56/2015 where Hon. Judge Levira (as she then was) on 14<sup>th</sup> December 2016 availed the Applicant 14 days to file the intended appeal. The Applicant timely filed the

appeal on 27<sup>th</sup> December 2016 which for reasons not disclosed was struck out by this court on 27<sup>th</sup> June 2019 for being incompetent before the court. Still wanting to exercise her right of appeal, the Applicant filed another application for extension of time on 14<sup>th</sup> August 2020 vide Misc. Land Application No.93 of 2020. Hon Judge Mambi extended 14 days to the Applicant to file appeal on 19.11.2020. The Applicant timely filed an application for revision instead of appeal and the same was struck out by this court on 12<sup>th</sup> November 2021.

It is from the last struck out order of this court that the Applicant has again preferred the instant application so that she can lodge her long standing appeal. The application is supported by an affidavit sworn by Applicant herself.

In this application the Applicant is represented by advocate Amani Angomisye; while the Respondent appeared in person. The Application was disposed of by way of written submission.

Submitting in support of the application, counsel for the Applicant adopted the contents of the affidavit in support of the chamber summons to form part of the submission. He reminded the court on the long journey endured by the Applicant in seeking

her right to appeal. He explained the precedented rule of the thumb in extension of time that among the factors to be considered are illegality and irregularities of the impugned decision and the applicant to account for each day of delay. Counsel for the Applicant's submission travelled from the first time the Applicant timely filed the intended appeal to the ruling of this court of 12.11.2021 which struck out the revision. He continued accounting for 65 days that passed from the last order to when the Applicant filed the instant application on 17.01.2022 that after finishing collecting the legal fees, her advocate had gone to a vacation until 15<sup>th</sup> January when he returned. Consequently, the application was filed on 17.01.2022. As for the second reason to apply for extension of time, he said the Chairman of the District Land and Housing Tribunal, did not accord the opportunity to the assessors to read their filed opinions but rather went straight to schedule a date for judgement. To support his arguments, counsel for the Applicant cited the Court of Appeal cases of **Harrison Mandali and 9 Others Vs The Registered Trustee of Archdiocese of Dar Es Salaam**, Civil Application No. 482/17/2017; and **Metro Petroleum Tanzania Limited and 3 Others Vs United Bank of Africa**,

Civil Appeal No 147/2019 on the principle that illegalities, irregularities and improprieties in the proceedings and judgement are good grounds to extend time. He thus prayed for the application to be allowed.

Responding to the submission by the Counsel for the Applicant, the Respondent hurriedly pointed to the court that the affidavit is not accompanied by the chamber summons as per the provisions of **Order XLIII Rule 2 of the Civil Procedure Code, Cap 33 RE 2012.**

Instantly, I made a quick glance of the application before me and found that the application filed which is supposed be a chamber summons but has missed to write the words "**Chamber Summons**". Else, everything reads exactly as it is supposed to be. On the circumstances therefore, I hurriedly conclude that the missing of the words "**Chamber Summons**" is *elapsus calami*. In line with the oxygen principle that essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice see **section 6 of the Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018** that amended the Civil Procedure Code, Cap 33 R.E. 2019; I find no embarrassment has been occasioned to either party or the court for the missing words for

the court to be unable to determine the matter on merits. Hence, the observation by the Respondent is unmeritorious and I ignore it.

In further reply, the Respondent urged the court not to entertain the application as it will be an abuse of the court process following various scenarios that the Applicant has been given the chance but ended up in defiance to its compliance. On cementing his argument on the abuse of court process, he cited the persuasive case of **Jolly Investment Ltd Vs Tanzania Ports Authority**, Miscellaneous Application Ni. 523 of 2018 (HC- DSM – Unreported). He added also that the intended appeal would be overtaken by event as the order in respect of judgement of Land Appeal No. 6 of 2013 has already been executed. He contended further that there were no illegalities in the said judgement. He prayed for the application to be dismissed with costs.

Extension of time is a discretionary power of the court to be exercised judiciously. The Court of Appeal has in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trustees of Young Women Christians Associations**, Civil Application No. 2 of 2010 (see also the case of **Hamisi Mohamed (as an administrator of the estate of the late Risasi Ngawe) Vs. Mtumwa Moshi (as**

**administratrix of the estate of the late Moshi Abdallah**), Civil Application No. 407 of 2019 (on the requirement to show that the delay was due to a good cause) which established guidelines to be observed by Court in granting extension of time. The Court held as follows:

*"Four guidelines which should be observed by Court in granting extension of time: that is:*

- a) The applicant must account for all the period of delay;*
- b) The delay should not be inordinate*
- c) The applicant must show diligence; and not apathy, negligence or sloppiness in the prosecution of the act that he intends to take, and*
- d) If the court feels that there are other sufficient reasons, such as existence of the point of law of sufficient importance; such as the illegality of the decision sought to be challenged"*

Going through the affidavit of the Applicant as adopted by her advocate, it can clearly be seen that the Applicant soon after the finalization of the impugned judgement in August, 2013 at the DLHT, preferred an appeal which was struck out for technical reasons. According to para 4 to 11 of the affidavit, the Applicant explained all the journey she went through to the instant application where she had to file two other applications for

extension of time as the previous ones ended up being struck out for their incompetence.

The Respondent termed the efforts as abuse of court process citing the persuasive case of **Jolly Investment Limited Vs Tanzania Ports Authority (supra)**. Nevertheless, I find the circumstances of the cited case to be different from the instant case on the fact that in the cited case, the applicant filed a multiple applications knowing that the previous ones have not been determined. Simply, he was on fishing expedition; whilst in the instant application, the Applicant has been persistent in ensuring that she files the intended appeal by filing the application immediately after the struck out order. If at all one could say that the Applicant has been making a lot of mistakes in her previous applications making her enjoin a long route and multiple applications. The same notwithstanding, I cannot close my eyes and ignore the initial efforts shown by the Applicant as she filed the first appeal well within prescribed time only to be struck out and then followed by a series of applications. Verily, I can say that the Applicant *exhibited diligence; and not apathy, negligence or sloppiness in the prosecution of the act that she intends to take* **(Lyamuya's**

**case (Supra)).** More so, the Applicant clearly explained as to why she delayed from filing the instant application from the date of the last order of this court of November 2021.

However, I must pose here and admit that I would not dwell much on the issue of illegality as I find the technical issues causing the delay are well explained and in considering the determination by the Applicant to lodge his appeal.

As for the fact that the order has been overtaken by event, the same shall be determined on appeal considering that this is not an application for stay of execution.

All said and done, I find that the Applicant has established sufficient reason for this court to exercise its discretionary powers to grant the application. I allow the application and the Applicant is granted thirty (30) days from the date of the ruling to lodge her appeal.

Ordered accordingly.



**R.A. Ebrahim**

**JUDGE**

**Mbeya**

**06.09.2022**

