

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

MISC. LAND APPLICATION NO. 89 OF 2021

*(C/f Land Application No. 105 of 2014 of the District Land and Housing Tribunal for
Manyara at Babati)*

**JULIANA LUJUO (Suing as the Administratrix of
the estate of the late PATRICK MAHUNA) APPLICANT**

VERSUS

SABINUS MWANJOMBE 1ST RESPONDENT

BABATI TOWN COUNCIL 2ND RESPONDENT

RULING

05/09/2022 & 10/10/2022

KAMUZORA, J.

The Applicant herein lodged this application under section 41(2) of the Land Disputes Courts Act [Cap 216 R.E 2019] seeking for extension of time to file an appeal against the decision of the District Land and Housing Tribunal (DLHT) for Manyara at Babati in Land Application No. 105 of 2014. The application is supported by the affidavit of Juliana Lujuo, the Applicant herein and contested through a counter affidavit

sworn by Sabinus Mwajombe the 1st Respondent. The 2nd Respondent did not file counter affidavit opposing the Applicant's application.

Hearing of the application was by way of written submission and the parties filed their submissions save for the 2nd Respondent and no rejoinder submission from the Applicant was filed. As a matter of legal representation, the Applicant enjoyed drafting services of Amani Erald Mkwama, an advocate from Legal and Human Rights Centre while the 1st Respondent enjoyed the service of John J. Lundu, learned advocate.

The facts of the matter leading to this current application as depicted from the record is such that, the Applicant instituted a land application before the DLHT against the Respondents and the decision was issued on 28/04/2021 in favour of the Respondents. The Applicant being dissatisfied by the decision filed an appeal before the same DLHT on 11th June 2021. On 19/10/2021 the Applicant was informed that the said appeal was rejected for being filed in a wrong court. The Applicant then preferred this application praying for extension of time on the reasons that the appeal was mistakenly filed before the DLHT instead of the High Court.

Arguing in support of the Application, the counsel for the Applicant adopted the contents of the affidavit filed in support of the application

and reiterated that, the Applicant being dissatisfied by the decision of the DLHT intended to appeal to the High Court but mistakenly filed the said appeal to the DLHT and upon following up of the said appeal she became aware that the same was wrongly filed. The counsel for the Applicant submitted that, the application is based on the point of law that the trial tribunal failed to consider that the case before it was wrongly filed contrary to section 25(3) of the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 which requires the joining of the Attorney General. Quoting the provision of section 31 and 33 of Act No. 1 of 2020, the counsel for the Applicant insisted that, since the Attorney General was not involved in the said case, the application was null and void and the DLHT had no jurisdiction to entertain the matter.

Contesting the application, the counsel for the first Respondent adopted the contents of the counter affidavit and pointed out that, the act of the Applicant to wait for 44 days before filing the appeal implies that the Applicant was not aggrieved by the decision of the DLHT. He pointed out that, the Applicant after filing his appeal to the wrong court he waited for 130 days before she acted and even after he became

aware that the same was filed in the wrong court, she waited for 12 days before filing this application.

He stressed that, there were unnecessary delays as the Applicant was negligent in following up her appeal and have not accounted for each day of the delay. Referring to paragraph 5, 6 and 7 of the Applicant's affidavit the Respondent stated that, the same are not the Applicant's depositions and are from the second person and not the Applicant. He added that, when the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 was gazetted the Application before the DLHT was already been heard and only the judgement was reserved. He was therefore of the view that, the adjudication of the matter by the DLHT was right as no any law was offended. It is the Respondent's prayer that, the application be dismissed for being devoid of merit.

Having analysed the submissions by the counsel for the parties for and against the application, the main issue calling for the determination by this court is whether the Applicant has adduced sufficient reasons warranting the grant of extension of time by this court. The law under section 41(2) of the Land Disputes Courts Act Cap 216 R.E 2019 requires an appeal to be lodged within a period of 45 (forty-five) days after the date of the decision or order.

Reading the Applicant's submission there is new point raised that, there is a point of law involved as the trial tribunal failed to consider that it had no jurisdiction to entertain the matter before it while the Attorney General was not made part to the suit. This reason was raised and argued by the Applicant in his submission and replied back by the Respondent. However, that reason was not among the grounds adduced or deponed under the affidavit filed in support of the application hence this court will not regard the same in reaching its decision. It must be noted that parties are bound by the pleadings, and the affidavit contain evidence. The fact raised in course of submission cannot be considered as fact proving the matter which need to be proved by affidavit.

Reverting back to the reasons deponed in the Applicant's affidavit in support of the application, specifically under paragraph 5 and 6 of that affidavit, the Applicant stated that he preferred an appeal on time that is on 11/06/2021 but the same was wrongly filed in the DLHT and not to this court. Also reading the attachments to the affidavit it shows that, a petition of appeal was lodged by the Applicant and endorsed with receiving stamp by the DLHT on 11/06/2021. The Applicant claim that she made follow of the appeal status and on 19th October 2021 she was informed by the tribunal clerk that the appeal was rejected. The

Applicant wants this court to consider that as a reason for delay in filing an appeal to this court.

In determining if those reasons surface the grant of the application, I will be guided by the principles laid down in the case of **Lyamuya Construction Company Ltd v. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported). The Court of appeal made it clear that, before granting an application for extension of time the court must be satisfied that the Applicant to account for all the period of delay, the delay should not be inordinate, the Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take and 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.

What was pleaded in the affidavit supporting the application is the fact that the Applicant mistakenly file the appeal in the wrong court. Now there was reasonableness in the period used before the Applicant could rectify the error of filing the appeal in the wrong registry. The Applicant intends to convince this court that the delay was a technical one as the appeal was mistakenly lodged in a wrong registry. It is

unfortunate that the appeal document was prepared by an advocate and the Applicant did not explain how the same ended in the wrong registry.

Apart from that, I have looked into the facts deponed in the Applicant's affidavit together with the supporting attachments. It is evident that the impugned decision was made on 28th April 2021 and the 45 days to lodge an appeal to this court was to lapse on 12/06/2021. It is with no doubt that on 11/06/2021 the Applicant lodged her appeal but in a wrong court. What is in controversial is the date to which the Applicant became aware that her appeal was rejected by the DLHT. The Applicant filed an appeal on 11/06/2021 but was informed on 19/10/2021 that the appeal was rejected. There is no evidence of the follow up and the date the appeal was rejected. From the date the appeal was filed to the date the Applicant claims to be informed of the rejection of the appeal, it is more than four months. No evidence of the follow up was attached or no facts were deponed in the affidavit showing what the Applicant was doing which prevented her from realising at the earlier time that the appeal was filed in a wrong registry.

Even if this court assumes that the Applicant's application was rejected by the DLHT on 19/10/2021 as alleged by the Applicant, still the Applicant has not accounted for the period between 19/10/2021

until 1/11/2021 when this application was lodged before this court. The Applicant is under law duty bound to account for each and every day of the delay with a view of demonstrating her diligence in prosecuting the matter. Such duty was not fully performed by the Applicant to the satisfaction of this court that the Applicant was diligent in prosecuting the case.

I therefore join hands with the submission by the counsel for the Respondent that, the Applicant was unable to justify the delay by her failure to account for each day of the delay. After she had lodged an appeal to the DLHT, the Applicant did not diligently make follow up of the same leading to unreasonable delay. The application is therefore devoid of merit hence, dismissed with costs.

DATED at ARUSHA this 10th day of October, 2022.



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

D.C. KAMUZORA

JUDGE