

IN HIGH THE COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPLICATION NO.18 OF 2022

*(Originating from the District Land and Housing Tribunal for Ruangwa at Ruangwa in
Land Appeal No.53 of 2021)*

SELEMANI NDUYENE.....APPLICANT

VERSUS

SAFINA FINTANI.....RESPONDENT

RULING

18/10/2022 & 27/10/2022

LALTAIKA, J.:

The applicant, **SELEMANI NDUYENE** is praying for this court to grant him an extension of time to appeal to this court out of time. The applicant is moving this court under section 38(1) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. The application is supported by an affidavit affirmed by **SELEMANI NDUYENE**. Needless to say, that the application has not been objected by a counter affidavit of the respondent.

At this juncture, a factual background leading to this application is imperative. The respondent, filed Land Case No.03 of 2021 before the Malolo Ward Tribunal situated at Ruangwa District and in Lindi Region. The respondent claimed ownership of the suit land against the applicant. On 23/09/2021 the trial Tribunal dismissed the land case and declared the applicant the rightful owner of the suit land. Dissatisfied and aggrieved, the respondent lodged a Land Appeal No.53 of 2021 before the District Land and Housing Tribunal for Ruangwa at Ruangwa. After hearing the

parties, the appellate Tribunal allowed the appeal by quashing and setting aside the decision of the trial tribunal. It went further when it declared the respondent the rightful owner of the suit land.

At the hearing of this appeal, the applicant appeared in person but was being represented by Mr. Emanuel Ngongi, learned counsel while the respondent appeared in person and unrepresented. When hearing commenced, the applicant submitted himself and averred that the main reason for delay is late supply of the copies of proceedings and judgment of the District Land and Housing Tribunal for Ruangwa.

In response, the respondent vehemently disputed the prayers of the applicant to be granted extension of time to file his appeal out of time. The respondent stressed that it is not true that tribunal delayed to supply the judgment. She maintained that on that day there were only five judgments and their judgment was the last.

In a very brief rejoinder, the applicant stressed that he was told to wait for the judgment for two weeks because the learned Chairman is working with other District Land and Housing Tribunals for Lindi, Ruangwa, Liwale and Nachingwea. The applicant submitted that the day he came he found that he had already paid. To this end, the applicant maintained that it was not his fault.

Having gone through the application by the applicant and submission of the respondent, I am inclined to decide on the merit or otherwise of the application. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse. Moreover,

extension of time may only be granted where it has been sufficiently established that the delay was justified with sufficient/good cause.

In the instant application the reasons for the delay by the applicant is featured under paragraphs 6,7,8 and 9 of the affirmed affidavit of the applicant. The main reasons grasped from those paragraphs and is oral submission are **one**, the delay by the Tribunal officials to supply the applicant with the certified copies of the proceedings and the judgment of same. **Two**, the judgment of the appellate Tribunal is tainted with illegality. The applicant assert that the Chairman erred in applying the principle of adverse possession since the respondent at the trial tribunal failed to establish her ownership and failed to described the boundaries of the suit farm.

In view of the above first reason taken from the applicant's affidavit plus his submission, it is apparent that the delay was caused by factors beyond the ability of the applicant's control and cannot be blamed on him. The period which is beyond his control is from the date from which judgment was delivered, he applied to be supplied with the certified copy of the judgment, the date of certification of the same and till the date when was supplied with same on 28/7/2022. This is simply called technical delay which courts normally exempt the applicants in many cases of this nature. Based on that argument the applicant delay from the date of

pronouncement of judgment to the date of supply of the certified copy of the judgment of the appellate Tribunal shall be excluded in computing the number of days he had delayed to lodge his appeal to this court.(See section 19 of the Law of Limitation Act [Cap. 89 R.E. 2019]).Since this matter has originated from the Ward Tribunal and the appellate Tribunal was exercising its appellate jurisdiction, the statutory time for lodging an appeal to this court for an aggrieved party is sixty days as far as section 38(1) of the Land Disputed Court Act is concern. Moreover, it the same provision of the law which provide for the discretionary power of this court to grant extension of time upon good and sufficient cause.

According to my simple arithmetic calculation the technical delay caused by the DLHT for Ruangwa is from 13/5/2022 to the date the applicant received the same on 28/7/2022 which is equivalent to fifty-nine (59) days. Therefore, fifty-nine (59) days shall be excluded in computing the days which the applicant has delayed to lodge his application to this court. Being guided by that position, I will start to evaluate the delay from 30/7/2022 to 30/8/2022 the delay he lodged this application as per Exchequer Receipt No. EC101465705974IP and with control number No. 991400723652 which shows that the applicant paid the filing fee on 30/08/2022 at 11:06:08 hours. According to my result of the simple

calculation from 30/07/2022 to 30/08/2022 gives the answer that the applicant has delayed for about thirty-two (32) days.

The applicant has averred at paragraph 8 of the affirmed affidavit that he managed to prepare his appeal on the same day which he was supplied with the certified copy of the judgment by the Tribunal. Furthermore, it was his contention that he failed to file the same on time due to the remoteness of the place he resides which required him to travel from Malolo to Ruangwa and from Ruangwa to Mtwara where this court is situated. According to his averment in the affidavit particularly the same paragraph 8 is that he brought his documents at the registry of this court and was told by the Registry Officer that the time to appeal has already lapsed.

The affidavit of the applicant is silent as from 5/8/2022 to the date he lodged the application (30/8/2022) as to what he was being doing. By assumption of any reasonable man, he would foresee as this court does, that the applicant went back to his remote area of residence to seek for legal assistant from where he previously received and later, he came back to this court as he did to file this application. Despite the fact that, the applicant has not accounted for days from 5/8/2022 up to the day of lodging the application, I am convinced that the applicant has justified how diligent he is in pursuing this matter without showing any sign of

negligence of apathy or sloppiness prosecuting his case. To a large extent, the delay is caused by the ineffectiveness of the appellate tribunal to supply him with the certified copies of the judgment which it took almost fifty-nine (59) days supply him with the same. In addition, when I compare the number of days delayed and caused by the appellate Tribunal and those caused by applicant. It is my finding that the applicant has proved high degree of diligence of making sure that matter back to court by looking another avenue of the remedy which would quench his thirsty of looking for justice. See, **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women Christian Association of Tanzania** (Civil Application No 2 of 2020) [2011] TZCA4.

Apart from that, the applicant has averred that the impugn judgment of the appellate Tribunal is tainted with illegality. The applicant has shown the illegality which he asserts that the Chairman erred in applying the principle of adverse possession since the respondent at the trial tribunal failed to establish her ownership and failed to described the boundaries of the suit farm. It is a trite law whenever an applicant asserts that there is an issue of illegality in the impugn judgment alone is a good and sufficient ground for granting him an extension of time to appeal to the higher court. See **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] TLR 185; and

Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women Christian Association of Tanzania
(supra).

The question now which pokes my mind is whether the reasons advanced by the applicant amounts to good cause. Besides, our law does not define what amounts to good cause. However, in the very recent case of **TCCIA Investment Company Limited vs DR. Gideon H. Kaunda**, (Civil Appeal 310 of 2019) [2022] TZCA 599 the Court of Appeal at page 13 quoted with approval the definition of phrase 'sufficient cause' from the Erstwhile Court of Appeal for East Africa in the case of **Shanti v. Hindoche and Another** [1973] E.A. 207 and thus stated that: -

"...the more persuasive reason...that he can show is that the delay has not been caused or contributed by dilatory conduct on his part. But that is not the only reason."

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge his petition of appeal out of time. The inability to supply the certified copies of the proceedings and judgment by Tribunals' officials justifies that there was negligence on the part of the DLHT for Ruangwa. I find that the applicant has advanced good cause for his delay and has acted diligently. He has not displayed any apathy, negligence or sloppiness in the prosecution he intends to

take. In addition, the assertion that the intended impugn judgment is tainted with illegality, this is a point of law which I find it is important to be challenged at this court.

For the foregoing reasons, I hold that the applicant has advanced sufficient reasons for the delay to warrant this court to exercise its discretion to grant the enlargement sought. Therefore, the application is hereby granted. The applicant is given thirty (30) days to lodge his Petition of Appeal effective from the date of this ruling.

It is so ordered.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

JUDGE

27.10.2022

COURT

This ruling is delivered under my hand and the seal of this Court on this 27th day of October, 2022 in the presence of the Mr. Emanuel Ngongi, learned counsel for the applicant and the respondent who has appeared in person, unrepresented.



E. I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E. I. Laltaika".

JUDGE

27.10.2022