

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISC. LAND APPLICATION NO.17 OF 2022**

**FATUMA SWALEHE NJOZI** (an administratrix of the Estate of the late Swalehe Hassani Njozi) .....**APPLICANT**

**VERSUS**

**THABITI HASSANI KAZUMARI**.....**1<sup>ST</sup> RESPONDENT**

**WERNER TARASISI CHIWEMBI**.....**2<sup>ND</sup> RESPONDENT**

**RULING**

*13/10/2022 & 20/10/2022*

**LALTAIKA, J.:**

The applicant, **FATUMA SWALEHE NJOZI** (as an administratrix of the estate of the late Swalehe Hassani Njozi) is praying for this court to grant her an enlargement of time to appeal to this court out of time. The applicant is moving this court under section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019]. The application is supported by an affidavit affirmed by Ms. Fatuma Swalehe Njozi. Needless to say, that the application is vehemently resisted by the counter affidavits deposed by the first and second respondents, respectively.

At this juncture, a factual background leading to this application is imperative. The applicant, filed Land Application No.12 of 2021 before the District Land and Housing Tribunal for Lindi claiming ownership of Plot of the suit land against the respondents. On 28/8/2020 the trial Tribunal dismissed the application with costs and prohibited the applicant to enter into the suit land and cause any disturbance to the respondents.

When this matter was called on for hearing the applicant and respondents both appeared in person and unrepresented. When hearing commenced, the applicant submitted that the main reason is that she received very late copies of proceedings and judgment of the District Land and Housing Tribunal for Lindi.

In response, the first respondent argued that he does not agree with the application for extension of time. While the second respondent submitted that the matter was finalised on 20/1/2022 and the Chairman of the District Land and Housing Tribunal gave 45 days for the appeal. The second respondent went further and contended that on 17/3/2022 is the date when the appellant went to pick up copies of the judgment and proceedings which were ready since 11/3/2022. The second respondent argued that the applicant has spent four months (a total of 101 days). He stressed that the judgement was late for only 8 days which means that the applicant had no intention to appeal.

It is the second respondent's submission that the applicant was supposed to show seriousness. The second respondent argued that in any case 121 days are excessive thus, he totally disagreed with the application. He also submitted that the applicant mentioned that she had a case in the Primary Court. He stressed that it is true the case instituted on 3/5/2022 to 13/5/2022 and judgment was delivered on 18/5/2022. The second respondent urged that how the criminal case prevented him from pursuing his appeal while she was a free man. To this end, the second respondent maintained that the applicant had no intention to appeal.

Moreover, the second respondent asserted that she had no money. He contended that the applicant as an administratrix of estate on behalf of 13

grown up people. The second respondent submitted that there is a deadline for appealing against any decision of a lower court. The respondent contended that he expected that there was a letter to the Chairman of the tribunal.

In a very short rejoinder, the applicant submitted that she used to go to the tribunal to collect a copy of the judgment but was told that the Chairman was at the villages. The applicant urged that her brother took her to the Chairman called Janeth and thus the Chairman gave her the copy of the judgment. The applicant went on and submitted that she consulted a lawyer who drafted the appeal for her. The applicant stressed that she was told to pay the respondents four hundreds insisted that she had two cases and had to pay 50,000/=. However, the applicant contended that she was sentenced many times because had many criminal cases. The applicant stressed that the respondents are responsible for the criminal cases against him.

Having keenly considered the submissions of both parties, I am inclined, at this juncture, to determine whether the applicant has advanced good or sufficient cause for the enlargement of time to lodge her appeal out of time. It is trite law that an application for extension of time is entirely in the discretion of the court to grant or not. Furthermore, extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient or good cause.

In the present application, the reasons for the delay are featured under paragraphs 3,4,5 and 6 of the affirmed affidavit of the applicant and vide her oral submission. The main reasons as can be grasped from the aforementioned paragraphs plus the oral submission are that **One**,late

supply of the certified copies of the proceedings and judgment of the tribunal. **Two**, prosecuted with the criminal trespass before the Primary Court of Lindi sitting at Mtama vide Criminal Case No.34 of 2022 and **three**, lack of money for lodging this application.

In view of the above observation, it is clear that the first reason for the delay was beyond the ability of the applicant to control and cannot be blamed. However, I am of alive that the applicant has not attached any letter which shows have she requested the certified copies of the proceedings and judgment of the tribunal. But upon my perusal of the record, I have noted that the tribunal delivered the intended impugn judgment on 20/01/2022 and certified the same on 11/3/2022. The date which the impugned judgment was certified is the one which shows that it was ready for collection. In fact, this delay was caused by the tribunal which will exempt the applicant to prove her delay from 20/01/2022 to 11/3/2022.

Furthermore, there are no clear record presented or submitted to this court as to when the applicant was arraigned at the Primary Court of Lindi sitting at Mtama. Since such information is lacking, presumably the matter went at the primary court soon after the land case was finalised. If that is the case, I assume that the applicant was still occupied in dealing with the criminal case of criminal trespass which was concluded on 18/5/2022. More so, the criminal case had a verdict against the applicant of either paying a fine at the tune of TZS.50,000/= or imprisonment for term of one month. Regarding this situation I am inclined to state that the applicant as human being was not able to continue with the processes of pursuing her appeal. It is settled that a criminal case may end up taking one's liberty of destabilising one's economy.



In addition, the applicant submitted that lack of money made her not to institute this application for praying for extension of time to appeal out of time. Indeed, it is quite clear that for someone who faces many criminal cases and also many sentences as the applicant. It is very possible that this situation could result to empty pockets to her for running the land matter. Furthermore, order of paying the respondents four hundred thousand shillings is also contributory to in ability to lodge the matter to this court. It is undisputed fact that most civil cases in our jurisdiction are subject to fees except when a party is exempted by the operation of law or rules.

The next issue I am called upon to resolve is whether or not the reasons advanced by the applicant amount to good cause. Our law does not define what amounts to good cause. However, in the case of **Reginal Manager, TANROADS Kagera v. Ruaha Concrete Company Ltd** Civil Application No90F 2007 (Unreported) it was held that:

*"Sufficient reasons cannot be laid down by any hard and fast rule. This must be determined in reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise its judicial discretion in order to extend the time."*

As to the matter at hand, I can safely say that, the applicant has advanced good cause for his delay to lodge her appeal to this court out of time. Indeed, the chain of events explained in the applicant's affidavit and also his submission shows that in spite of inability to follow up on his case due to the circumstances beyond her control, she has not given up. I am convinced that the applicant has not only advanced good cause but

also exhibited great diligence in pursuing his appeal. He has not shown any apathy, negligence or sloppiness in the prosecution he intends to take as emphasized in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered trustees of the Young Women Christian Association of Tanzania** Civil Application No 2 of 2020 [2011] TZCA4.

In view of the above reasons advanced by the applicant and observed by this court, I am of the settled position that as the court of record which must ensure that justice is done and cases must come to end. It is important to employ the Principle of Overriding objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act,2018 [Act No.8 of 2018] which requires courts to deal with the cases justly, and to have regard to substantial justice.

For the foregoing reasons, I find and 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 applicant is hereby given forty-five (45) days to lodge her appeal out of the prescribed time by the law effective from the date of this ruling.

It is so ordered.



**E.I. LALTAIKA**

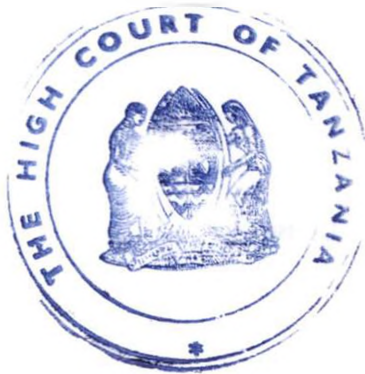
A handwritten signature in blue ink, appearing to read "E.I. Laltaika", is written over the printed name and title.

**JUDGE**

**20.10.2022**

**Court:**

This ruling is delivered under my hand and the seal of this Court on this 20<sup>th</sup> day of October, 2022 in the presence of both the applicant and respondents who have appeared in person, unrepresented.



**E. I. LALTAIKA**

*E. I. Laltaika*  
**JUDGE**

**20.10.2022**