

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. LAND APPLICATION NO 1 OF 2021

(Arising from Land Appeal No. 10 of 2019 of the High Court of Tanzania at
Tabora and Originating from Misc. Land Application No 189 of 2018 of the
District Land and Housing Tribunal for Tabora)

FUNGA MAGANGA.....APPLICANT

VERSUS

JERUMI NHUMBI..... RESPONDENT

.....
RULING
.....

Date of Last Order: 30/09/2022

Date of Delivery: 7/12/2022

AMOUR S. KHAMIS, J.

Funga Maganga has filed this application to extend time within which he can file an appeal against the decision of the District Land and Housing Tribunal for Tabora in Misc. Land Application 189 of 2018.

The application is made under S. 41(2) of the Land Dispute Courts Act, Cap. 216, R.E 2019 and supported by an affidavit sworn in by the applicant, Funga Maganga.

In the applicant's affidavit, he stated that after being dissatisfied by the decision of the District Land and Housing Tribunal in Misc. Land Application No. 189 of 2018, he filed an appeal to this Court in Land Appeal No. 10 of 2019 but the same

was struck out after a preliminary objection was raised that the appeal is incompetent.

The applicant added that since he was still aggrieved by the decision of the District Land and Housing Tribunal, then filed this application for extension of time to file an appeal.

On the other hand, the respondent objected the application in a counter affidavit sworn in by Mr. Emmanuel Musyani, learned advocate.

When the application was set for hearing, the applicant was represented by Ms. Flavia Francis, learned advocate and the respondent enjoyed the services of Mr. Emmanuel Musyani, learned advocate. Both advocates agreed on written submission as a way to dispose of this application.

In her submissions, Ms. Flavia Francis prayed to adopt the contents of the applicant's affidavit as part of her submissions. She then stated that the applicant was a party to Land Application No. 7 of 2016 that was before Ntaliwka Ward Tribunal of which he was not victorious.

She contended that the applicant delayed to file an appeal to the District Land and Housing Tribunal against the decision of the Ward Tribunal, and then filed Misc. Land Application No. 189 of 2018 to the District Land and Housing Tribunal for an extension of time to file his appeal. However, the same was dismissed.

Ms. Flavia Francis further averred that the applicant then lodged an appeal to this Court as Land Appeal No. 10 of 2019 but at the time of filing it, he was told by the registry office to lodge his

appeal at the District Land and Housing Tribunal since his matter originated from the Ward Tribunal.

The learned advocate asserted that on hearing Land Appeal No. 10 of 2019 before this Court, a preliminary objection was raised by the respondent herein for improper filing as the appeal ought to have been filed directly to this Court.

Ms. Flavia advanced that the delay of filing an appeal was not due to negligence of the applicant as he was busy in the Court corridors trying to access justice and hence, he has a good reason for delay.

She cited the case of **HUMPHREY CONSTRUCTION LTD VS VIMAJO AND SON, MISC. CIVIL APPLICATION NO. 19/2016 HIGH COURT AT TABORA** (unreported) where the Court stated that:

“To substantiate the point that where an applicant has not been sitting idle but has at all time been engaged in applications necessary to allow him to access the judicial system, then that is a good ground to warrant an extension of time.”

The learned advocate for the applicant concluded by praying for the application to be granted.

Replying to the submission by the applicant, Mr. Emmanuel Musyani, advocate for the respondent, stated that the applicant didn't comply with the order of the Court which was to file the submissions in chief by 28/09/2021 and instead, the applicant filed his submissions on 12/10/2021.

He argued that time framework in the adjudication of cases is vital for speedy dispensation of justice. Therefore, the time set by courts has binding force like the time set by procedural rules because they are all intended to create convenient, fair and just atmosphere for the adjudication process. Failure to comply with the time prescribed by the courts has the same effect as unreasoned failure to comply with procedural rules.

Mr. Musyani insisted that court orders must be respected, otherwise they will be rendered nugatory and that would set a bad precedent. He cited the case of **JUMA HEREYE VS SOSPIT MPOMA & 2 OTHERS IN LAND APPEAL NO.31 OF 2016** (unreported) where the Court held that; *"if the Court order is not obeyed, the Court will be reduced to mere toothless dog..."*

In alternative, the learned advocated asserted that there are no sound grounds to move the Court for orders sought as there would be chaos thus breeding grounds for endless litigation and that interest of justice demand matter to come an end as justice delayed is justice denied.

Mr. Musyani concluded by praying for this Court to strike out the application with costs for non-compliance with the Court order.

I have gone through the submissions of both parties and the records of this application. The main issue for determination in this matter is whether or not sufficient cause has been shown by the applicant to warrant this Court exercise its discretion to grant extension of time to file an appeal out of time.

Section 41(2) of the **LAND DISPUTES COURTS ACT, CAP 216, R.E 2019** provides that the High Court may for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five (45) days after the date of decision or order.

It is trite law that whoever applies for extension of time must account for each day of the delay. This was well stated in the case of **LYAMUYA CONSTRUCTION CO LTD VS BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO. 2 OF 2010** (unreported) where the Court clearly laid down the guidelines to be followed in any application for extension of time namely:

- "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 action that he intends to take,*
- d) If the Court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."*

The applicant advanced one reason for the delay, that he was in this Court corridors trying to access justice. He explained that upon being aggrieved by the District Land and Housing Tribunal in Misc. Land Application 189 of 2018, he appealed to this Court in Land Appeal No. 10 of 2019 but his appeal was struck out for being incompetent and hence this application.

Upon perusal of the records, I am satisfied that in deed the applicant did not seat idle but actively engaged the Court to challenge the impugned decision.

For the above reason, I find it justifiable to grant the application on the principle of technical delay as pointed out by this Court in ***THE REGISTERED TRUSTEES OF REDEEMED ASSEMBLIES OF GOD IN TANZANIA (TAG) V OBED HERIZON SICHEMBE & ANOTHER, MISC. LAND APPLICATION NO. 82 OF 2020*** (High Court Mbeya- Unreported).

In the upshot, the application is allowed. Let the applicant file his intended appeal within thirty (30) days from the date of delivery of this ruling.



AMOUR S. KHAMIS

JUDGE

7/12/2022

Date: 7/12/2022

Coram: Hon. H. Rweikiza Ag. DR

Applicants: Absent

Respondents: Ms. Ester Mchelle & Ms. Christina Jackson for respondent.

B/C: Lucy Haule, RMA

ORDER

Ruling delivered in chambers in the presence of Ms. Esther Mchelle and Ms. Christina Jackson both Advocates for the respondent. The applicant was absent.



H. RWEIKIZA

AG. DEPUTY REGISTRAR

7/12/2022