

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

MISC. LAND CASE APPLICATION NO. 40 OF 2021

(Arising from Same Land and Housing Tribunal in Application no. 18 of 2018)

ELIZABETH ANDREA KAHULULE APPLICANT

VERSUS

HADIJA MSOMBA RESPONDENT

RULING

17th March & 4th April, 2023

A.P.KILIMI, J.:

The applicant hereinabove has moved this court by way of chamber summons under Section 41 (2) of The Land Disputes Court Act, Cap 216 (R.E 2019), Section 14 (1) of The Law of Limitation Act, Cap 89 (R.E 2019) and Section 95 of the Civil Procedure Code, Cap 33 (R.E 2019) seeking the following orders to be granted to her: -

1. That this Court be pleased to grant leave for an extension of time within which the Applicant will lodge the memorandum of appeal against the decision of The District Land and Housing Tribunal for Same made on the 9th day of June 2020 at Same, within Same District in Land Application Number 18 of 2018.
2. Costs of this Application be provided for.

3. Any other relief(s) that this Court may deem fit to grant.

The applicant has supported this application with her duly sworn affidavit, wherein she has deposed that she requested the certified copies of the proceedings and the judgement of the District Land and Housing Tribunal for Same as mandatorily requirement under the law in order to file the memorandum of appeal since she could not lodge the memorandum of appeal in respect of the said appeals without obtaining the said documents. She then approached the Secretary of the District Land and Housing Tribunal for several time requesting the said document without success, she then decided to complain to the Kilimanjaro Regional Commissioner.

The applicant further in affidavit deposed that, she has realized that it is impossible for her to lodge the appeal even if the certified copies of the proceedings and judgement are availed to her, since the period of time within which the Applicant was required to file the appeal has already expired, therefore she has filed this application for the extension of time within which to enable her to file the memorandum of appeal. Finally, she added that, if leave is granted, she has overwhelming chances of success and if it will be denied she will suffer loss irreparably.

At the hearing of this application, applicant stood herself, while the Respondent was absent. However, this matter delayed because one Lilian Masonga Mtei who identified herself to this court as the relative of the respondent, she reported to this court that respondent died intestate in her home in Kenya on 3rd February, 2022. From then this court instructed Lilian Masonga to seek for a letter of Administration of estate, despite of filing her affidavit to that effect she failed to secure a letter of administration due to lack of necessary documents, the death certificate inclusive. In view thereof I ruled this court proceed *ex parte* since her relative lacks' locus standi.

The applicant when heard prayed to adopt her affidavit, further she said that at the tribunal the respondent represented her mother illegally, because she knew her mother passed away in Kenya, therefore she was having no authority to represent her mother at the tribunal.

Having considered the submission by the applicant and her affidavit thereto, the point for determination is whether there is sufficient cause for this court to grant the prayer sought.

There is a plethora of legal authorities in this respect. As it was decided in numerous decisions of the Court of Appeal of Tanzania, in the case of **M.B**

Business Limited vs. Amos David Kassanda & 2 others, Civil Application No.48/17/2018 and the case of **Benedict Mumelo vs. Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

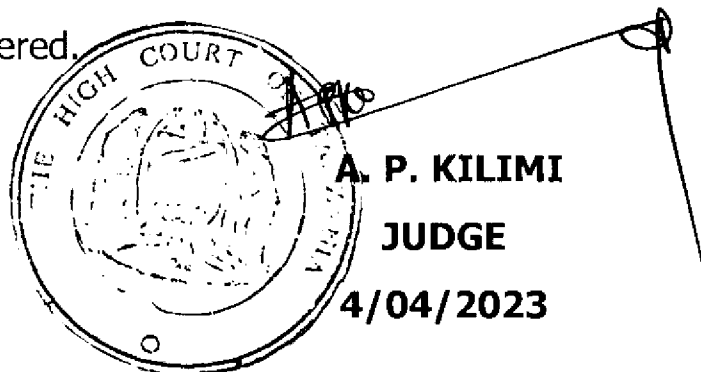
"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."

The factors which may be taken into account in considering whether or not the applicant has shown good or sufficient cause for delay were illustrated in the case of **Lyamuya Construction Company Limited vs. Board of the Registered Trustees of Young Women's Christian Association of Tanzania**, Civil application No. 2 of 2010 (unreported) which are:

- "(1) That the applicant must account for all the period of delay;*
- (2) The delay should not be inordinate;*
- (3) The applicant must show diligence and not apathy negligence or sloppiness of the action that he intends to take;*
- (4) If the Court feels that there are other sufficient reasons, such as existence of a point of law of sufficient importance such as illegality of the decision sought to be challenged."*

I have considered these reasons stated by the applicant through her affidavit and the document attached thereto, I am settled that the applicant immediately after the Judgment at the tribunal she lodged a notice of appeal and prayed to be supplied copy of proceeding and Judgement of her case, this took only two days after delivering of Judgment. Thus, she could have done nothing if at all the said documents were not supplied to her. In view of the position of the authority referred above, I am of considered opinion the reasons stated amount to sufficient cause to grant this application. I therefore grant this application as follows; leave is granted to applicant to file his appeal out of time within 21 days from today.

It is so ordered.



Court: - Ruling delivered today on 4th day of April, 2023 in the presence of the applicant, Respondent absent.

Sgd: A. P. KILIMI
JUDGE
4/04/2023