

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MWANZA
AT MWANZA**

MISCELLANEOUS LAND APPLICATION NO. 26 OF 2022

(Arising from the District Land and Housing for Mwanza in Application No. 450 of 2016)

DAVID GWABARA MRONDORO APPLICANT

VERSUS

SITA NYIGA 1st RESPONDENT

MARIA SITA 2nd RESPONDENT

RULING

2nd March & 28th April 2023

ITEMBA, J

In this application, the applicant David Gwabara Mrondoro is moving the court to issue an extension of time to file an appeal out of time. The intended appeal is against the ruling issued by the District Land and Housing Tribunal for Mwanza herein the Tribunal, in Misc. Land Application No.450 D of 2022.

The application is supported by the applicant's affidavit. The 2nd respondent has filed a counter affidavit opposing the application, through his counsel Mr. Ditrick Raphael. The respondent had also filed a notice of preliminary objection attacking the applicant's affidavit but

agreed to withdraw it once the applicant will drop the paragraph which were disputed.

At the hearing the applicant as represented by advocate Innocent Michael while the 2nd respondent had the services of Mr. Ditrick Raphael learned counsel. The 1st respondent was not present even after a substituted service through publication was done, therefore the application proceeded in his absence.

Reading through the applicant's affidavit and his submissions he advanced grounds for application that, he filed land application no. 450/2016 at the Tribunal over a dispute of ownership between himself and the respondents, who once sold to him the said land.

That on 9.7.2018 he was present at the District Land and Housing Tribunal but the case was not called for hearing, he was informed by a court clerk that it has been adjourned up to 10.10.2018 then he was informed that the case was struck out for want of prosecution since 27.8.2018 which was not even a day scheduled for hearing. That, he got a copy of relevant order on 11.11.2018 and on 12.11.2018 he made a Misc. Application for extension of time No. 450C/2018 but it was struck out for being supported with a defective affidavit on 5.7.2019. He has

attached the said application as DGM1. That, he then wrote two letters dated 19.9.2019 and 9.1.2020 respectively, requesting for copy of ruling. He attached the said letters as DGM 2 and DGM 3.

The applicant added that, it was not until when he involved the attorney at Droit Law chambers, when they were issued with a copy of ruling DGM4 on 14.4.2020.

The applicant avers further that on 15.4.2020 he made another application for extension of time No. 450D of 2020 but it was dismissed on 27.8.2018 for having no sufficient grounds. Again, he requested the Tribunal for copies of proceedings and ruling, DGM-5. On 1.3.2022 they were issued with the ruling except for the drawn orders. That, they had to request for that order through another letters DGM 7 which was finally issued on 10.3.2022.

Therefore, he argues that, the delay was caused by the time used by the applicant in waiting for copy of drawn orders. He cited section 19(2) of the Law of Limitation Act (LLA) which provides that time spent in obtaining judgment, decrees and in their case drawn orders to be excluded in computation the delay if any.

In reply, the respondent's counsel strongly opposed the application. He submitted that no sufficient ground has been established by the applicant because the impugned decision was issued on 27.8.2021 and this application is filed on 29.3.2022 which is 214 days after that decision. That, the applicant did not account for all those days, he adds that the application was not scheduled for 27th of September but 27th of August 2018, and that, the applicant should have listened carefully to the court order. That there is no copy of proceedings attached to prove that the order for ruling was on 27th September.

Based on the gist of application and parties' submissions the issue is whether the applicant has advanced sufficient reasons for grant of extension. Section 14 of the Law of Limitations Act provides that:

'14. -(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.'

In line with that provision, celebrated case of ***Lyamuya Construction Company Limited v. Board of Trustees of YWCA***, CAT-Civil Application No. 2 of 2010 (unreported) has long established the conditions for the court to consider before issuing an extension of time; as follows;

"(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 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 illegality of the decision sought to be challenged."

It has also been underscored, that in determining what constitutes sufficient cause regard has to be had to all circumstances of a particular case. See: ***Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Limited***, CAT-Civil Application No. 95 of 2007 (unreported).

It is from the applicants that when the impugned decision was issued, he was not at the court, indeed as stated by the respondent, there are no proceedings to support that allegation, but reading from the typed ruling itself, PGM 7 at page 7 it is written that it was issued in the presence of 2nd respondent's counsel only. Therefore, the applicant was not present at the tribunal when the impugned decision was issued.

As to what transpired between 27.8.2018, and the time of filing this application on 29.3.2022, the applicant has stated that he has been trying to make other applications which were either struck out or dismissed. But he has been requesting the Tribunal for copies of ruling and the last letter was issued to District Land and Housing Tribunal on 7.9.2021 DGM 6. He also states that he travelled to Musoma thereafter.

Based on this explanation. It is clear that between 27.8.2018 and 10.3.2022 the applicant was in the court's corridors chasing for his right.

It is trite law that a delay arising from time spent in the corridors of the court to pursue justice in good faith constitutes an excusable delay. See: - **Omary Ally Nyammalege (as administrator of the Estate of the Late Seleman Ally Nyama lege) and Others vs. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017).

The interpretation of these decisions are in the spirit of section 19(2) of the Law of Limitation Act which provides that, in computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded. It is my well-thought-out view that, the applicant cannot be denied his right to be heard because of the delay made in issuing the necessary copies of the impugned ruling and order. The applicant could not have filed the appeal without having the copy of ruling and drawn order.

I have also considered the fact that the applicant intends to raise the issue on lawfulness of the certificate of title on the disputed land. Because the matter has never been heard on the real substance, parties deserve a day in court to settle their dispute on merit.

Based on the above cited authorities and contention by both parties, I find that technical delay as raised by the applicant's counsel is reasonable to warrant this application. I therefore I allow the application. That being said, leave is granted to the applicant to appeal to this court against the decision of District Land and Housing Tribunal for Mwanza in Miscellaneous Application no. 540D of 2022 issued on

27/8/2021. The appeal shall be lodged within thirty (30) days after delivery of this ruling. Costs to follow the event.

Right of appeal duly explained.

DATED at **MWANZA** this 28 day of April, 2023.

