

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

MISC. LAND APPLICATION NO. 49 OF 2022

(Originating from the District Land and Housing Tribunal of Arusha at Arusha in
Misc. Land Application No 172 of 2020)

KENDO MBOYA LAIZER APPLICANT

VERSUS

NEMBRIS FRANCIS MOISAN RESPONDENT

RULING

12th June & 31st July 2023

KAMUZORA, J.

The Applicant is seeking for extension of time to file an appeal to this Court against the decision of the District Land and Housing Tribunal (DLHT) for Arusha in Misc. Land Application No. 172 of 2020. The application was brought by way of chamber summons under section 41 (1) and (2) of the Land Disputes Courts Act Cap 216 RE 2019 and section 14 (1) of the Law of Limitation Act, [Cap 89 R.E 2019]. It is also supported by an affidavit deposed by the Applicant.

Briefly, the Respondent herein instituted Land Case No. 128 of 2018 before the DLHT. The same was heard and determined ex-parte. The

Applicant herein upon becoming aware of the ex-parte decision and being barred by time limitation, he filed Misc. Land Application No. 172 of 2020 before the DLHT praying for extension of time to file an application to set aside ex-parte judgment. The said application was dismissed for want of merit. The Applicant was aggrieved and wanted to appeal but again, he was out of time to file an appeal to this court. He preferred this application praying for extension of time to file appeal against the decision of the DLHT.

In his affidavit in support of application the Applicant deponed that during the pendency of application for extension of time before the DLHT, the Respondent herein referred the dispute to the District Administrative Secretary (DAS). That, they all attended a meeting hosted by DAS and they reached consensus in which, they again held a clan/family meeting to execute their resolution. That, as part of their meeting resolution, they also agreed to withdraw all cases pending before any court or Tribunal. That, the Applicant notified the Tribunal over their agreement but the Tribunal proceeded to determine the application by dismissing it without even determining issue of illegality that was raised by the Applicant.

The Applicant further averred that, he believed that the Respondent had agreed and was ready to honour all resolutions passed during the

clan agreement hence, did not file appeal against such decision. That, to his surprise, in the year 2021 the Respondent decided to initiate execution process before the DLHT. That, by that time it was mid-march and the Applicant was going through matrimonial difficulties which costed him much time trying to resolve them. That, at the time he came to realise that the Respondent has stood to her mind and decided to pursue execution, the Applicant was already out of time to file an appeal. He therefore preferred the present application for extension of time so as to file appeal against the decision of the DLHT dismissing his application for extension of time to file application to set aside ex-parte judgment. The Applicant pleaded the following grounds in his affidavit;

1. That, the trial Tribunal entertained the case without jurisdiction.
2. That, the Applicant was condemned unheard contrary to the Constitution of the United Republic of Tanzania and principle of natural justice.
3. That, illegality was pleaded but left undetermined by the trial Tribunal.
4. That, the trial Tribunal raised and determined facts which were undisputed.

In addition to what was deposed in the affidavit, the Applicant submitted that the condition set under the law and case laws for grant of extension of time was complied. He referred English case of **R Vs Commissioner of Winchester Prison, Exp Roddie**, (1991) 2 ALL ER 931 which defined the term good cause. He also referred Tanzania decisions; the cases of **Aidan Chale Vs Republic**, Criminal Appeal No 130 of 2003, **Regional Manager TANROADS Kagera Vs. Ruaha Concreate Company Ltd**, Civil Application No. 99 of 2007 and **Lyamuya Construction Company Limited Vs Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Appeal No. 2 of 2010.

The Applicant further submitted that he was able to demonstrate that the delay was because the Respondent referred the matter to the DAS and then the family meeting was held. That, they resolved the matter and agreed to notify the court but the Respondent turned around and decided to initiate execution process contrary to what they agreed during family meeting. The Applicant also submitted that he was going through matrimonial difficulties thus could not deal with all matters at the same time.

The Applicant further submitted that there was point of illegality that was left undetermined by the DLHT. He referred this court to the

case of **VIP Engineering Vs. Marketing Limited & Citibank Tanzania Limited**, Consolidated Civil Reference No. 6,7 & 8 of 2006 and the case of **Ezrom Magesa Maryono Vs Kassim Mohamed Said and Another**, Civil Application No. 148/17 of 2017 to cement on the point of illegality. The illegality that was referred by the Applicant were that, the trial Tribunal lacked jurisdiction to entertain the suit, that, the Applicant was condemned unheard and that, the pleaded facts were left undetermined while the Tribunal determined facts which were not in dispute. He urged this court to consider that the Applicant has shown good cause to warrant extension of time to file appeal against the decision of the DLHT in Misc. Land Application No. 172 of 2020.

The Respondent on the other hand replied that the ruling of the DLHT was delivered in the presence of all parties but the Applicant did not bother to challenge the same by filing an appeal on time. That, after the decision was made, the Applicant did not take action and instead decided to trespass into the suit land by building a toilet near the Respondent's house and threatening the Respondent. That, the matter was reported to the police and later to the DAS of Arumeru for intervention. She maintained that there was no any settlement between them as she never attended the family meeting. That, nothing was settled in court as parties never sought for leave of the Tribunal to settle

matter out of court and that the Tribunal was correct in delivering the ruling. She insisted that the family meeting convened by the Applicant was in violation of law because they tried to discuss matters which were still pending in court. That, by deciding to pursue the dispute through family meeting, the Applicant went astray and failed to appeal on time delaying for almost 12 months contrary to section 38 (1) of the LDCA. She was of the view that, since the Applicant was unable to account for that delay, the extension of time should not be granted.

On the argument based on jurisdiction of the trial Tribunal the Respondent submitted that nothing was attached to verify the value of the subject matter. On the argument based on right to be heard, the Respondent submitted that all parties were heard by the trial Tribunal in Misc. Land Application No 172 of 2020. On the argument that a point of illegality was not determined by the trial Tribunal and that the Tribunal expunged his defence, the Respondent submitted that such argument is unsubstantiated. She explained that, the Applicant did not file defence thus, there was nothing to be expunged. The Respondent urged this court to disregard all cases referred by the Applicant as they are irrelevant. She however prayed for this court to be guided by the decision in **Lyamuya Construction** (supra) and rule out that the

Applicant has no good reasons for delay and he has failed to account for delay.

The Respondent further submitted that this application is overtaken by event as execution in which this application intends to cure was effected in February 2023. That, warrant of attachment was issued and the Applicant herein complied by paying the decreed amount. The Respondent therefore prayed for the application to be dismissed with costs.

In rejoinder, the Applicant reiterated the submission in chief and added that the original land case was heard ex-parte hence, he was denied right to fair hearing. That, since all subsequent applications were dismissed, the ex-parte judgment remained valid. He was of the view that, for him to be heard, it is necessary that this application be granted to pave way to setting aside the ex-parte judgment so that there would be right to be heard on the main dispute for both parties.

On the argument that the Applicant trespassed into the Respondent's land, the Applicant submitted that it was a new issue not prior pleaded hence, should be disregarded by this court. On the argument that the matter is overtaken by event, the Applicant rejoined that, it is a new issue not pleaded and it is a mere statement from the bar. He urged this court to disregard the argument and the documents

which are attached to the submission on ground that they cannot form part of evidence to prove any fact in this application. The Applicant maintained that he was able to demonstrate the reason for delay in filing appeal before this court. He therefore prayed for an order extending time to file an appeal against the decision for the DLHT denying him extension of time to file application to set aside ex-parte judgment.

I have considered rival submissions for and against this application. It is a trite principle that, grant of extension of time is entirely the court's discretion, which, however, must be exercised judiciously. More to say, grant of extension of time by the court is not automatic, the Applicant has to convince the court that he or she has reasonable and sufficient grounds for delay for the court to exercise its discretion in granting the order sought. See the case of **Benedict Mumello Vs. Bank of Tanzania**, Civil Appeal No. 12 of 2012, CAT.

The question for determination in the present application is whether the Applicant has advanced good reason to warrant extension of time.

From what was deponed in the affidavit in support of application together with submission by the Applicant, it is clear that the Applicant has been most of the time reluctant in taking action on time. In other words, the Applicant has not been acting diligently in pursuing his rights. I will demonstrate my reason to that conclusion as hereunder;

When the original land case was filed before the DLHT, the Applicant did not file his defence on time hence, the suit was heard and determined ex-parte. However, I do not intend to discuss what transpired in the original suit because it is not a matter for discussion in this application. I only decided to capture that fact for purpose of discussing the Applicant's trends in pursuing his rights in this matter. The record shows that the ex-parte order was made in his presence but he did not make any action until when the decision was made. He did not file application to set aside ex-parte order or decision until he was out of time. He then filed an application for extension of time to file application to set aside ex-parte judgement. Both parties were heard as they were allowed to argue the application by way of written submissions which they both complied. The ruling date was set and the ruling was delivered in the presence of the Applicant and Respondent's advocate. This reflect that the Applicant was aware of all stages in this case and the results. Since he was present at the time the ruling was delivered, it was expected that the Applicant would take reasonable step to appeal against the decision if he was not satisfied. I therefore find that the Applicant has shown sloppiness in prosecuting the matter. He was most of the time aware of all case stages but opted not to act promptly in taking action. The contention that the matter was referred to DAS and

went for discussion at family level in my view, cannot constitute good reason for delay in filing appeal.

Again, the contention that point of illegality was not determined by the DLHT cannot form a good ground for the Applicant's failure to appeal on time. That could only be dealt with in appeal if the Applicant was able to file it timely. What need to be proved here is the reasons why after the Applicant had observed all those inconsistencies in the Tribunal decision, did not appeal immediately before this court. While the decision of the trial Tribunal was delivered on 01/03/2021, the present application was filed before this court on 21/04/2022, more than a year. That period is too long and the Applicant cannot hide under the umbrella of negotiation for the matter that was in court while no leave of the court was granted. I therefore agree with the Respondent that the Applicant had no good reason for delay and he failed to even account for the delay.

On the argument that the trial Tribunal lacked jurisdiction, this court finds that such argument as an afterthought. It was not even the ground used to move the Tribunal to grant extension of time to file application to set aside the ex-parte judgment. It cannot therefore, in my view, become a reason at this stage for granting extension of time to file appeal emanating from decision in the same matter.

On the argument that the Applicant was denied the right to be heard, I find same unmaintainable. The right to be heard referred here is basically based on the fact that the case was heard ex-parte. That cannot be determined in an application for extension of time, rather, it is a fact which could well be dealt with when dealing with application to set aside ex-parte judgment. In this application it was expected for the Applicant to demonstrate why he delayed in filing appeal and in addition, point out illegality in the decision intended to be challenged. The Applicant was unable to point out any illegality in the decision of the DLHT in Misc. Land Application No. 172 of 2020 which he intended to challenge on appeal.


On the argument that, the trial Tribunal raised and determined facts which were undisputed, this court finds it unmerited. The Applicant was unable to explain how the Tribunal's conduct, if any, resulted to unjust decision. But again, it is not a good reason for grant of extension of time to file appeal before this court as it cannot be an issued for discussion in an application for extension of time.

In the final analysis, it is my settled view that no sufficient reasons were advance by the Applicant to warrant extension of time. Worse enough, the Applicant failed to demonstrate and account for the delay of more than one year after the decision of the DLHT was made. I

therefore find this application devoid of merit and proceed to dismiss the same with costs.

DATED at **ARUSHA** this 31st day of July 2023.




D.C. KAMUZORA
JUDGE

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