

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 6 OF 2022

(Application from the decision of the District Land and Housing Tribunal for
Mbulu District in Land Appeal No. 2 of 2019)

SILO GADIYE HHEKE..... APPLICANT

VERSUS

MASSAY AMNAY TLAYSA.....RESPONDENT

RULING

Date: 6/3/2023 & 30/3/2023

BARTHY, J.

The applicant filed the present application under Section 38 (1) of the Land Disputes Courts Act [CAP 216 R.E 2019] (the Act) seeking for the following reliefs;

- i. That, this honourable court be pleased to grant leave to the applicant for (sic) filing an appeal out of time in respect of the judgment delivered at Mbulu District Land and Housing Tribunal in land application No.*

*02/2019 Hon. Ntumengwa M. Ntumengwa) dated
30/6/2020.*

- ii. That costs of this application be provided for.*
- iii. That any other relief(s) that this honourable court
may deem fit and just to grant.*

The application is being supported by an affidavit sworn by the applicant himself. On the other hand, the respondent has filed a counter affidavit to contest the application.

During the hearing of this application, the applicant was represented by Mr. Abdallah Kilobwa learned counsel, whereas the respondent appeared in person. The application was disposed of orally.

It was the argument of Mr. Kilobwa that, the applicant is seeking for an extension of time to appeal against the decision of the District Land and Housing Tribunal for Mbulu (hereinafter referred as the DLHT) in land appeal No. 2 of 2019 dated 30/6/2020.

The learned counsel further submitted that, the respondent was declared the lawful owner the suit land, which prompted the applicant to seek for extension of time to appeal against the said decision.

It was stated, for the reasons of sickness the applicant could not lodge his appeal within time, hence he lodged an application No. 81 of 2020 before the high court of Arusha for the extension of time. The applicant was therefore granted 21 days of the extension of time to file the intended appeal.

Mr. Kilobwa went on to submit that, the applicant lodged his appeal on Land Division of High Court of Arusha after the extension of time, but it was not admitted. The counsel for the applicant lodged again the said appeal on the registry of Arusha High Court where it was dmitted as Land Appeal No. 76 of 2022.

It was also his submission that, on 18/10/2022 when the said appeal was fixed for mention it was learned that it was filed out of time. Mr. Kilobwa argued that failure to file the said appeal within time was not on the applicant's fault but was due to technical issues.

Thus, he prayed for the extension of time to file their appeal out of time to challenge the decision of DLHT.

On the reply submission the respondent contested the application claiming that the applicant was given 60 days by the DLHT to file his appeal but he

did not do so. Even after being granted with the extension of time and filed the petition of appeal, but he eventually withdrew it. He further counter argued that, the applicant was just playing delay tactics and there was no any technical reason for the delay. He therefore urged the court to dismiss the application.

On rejoinder, Mr. Kilobwa reiterated his arguments in his submission in chief. Having gone through the competing submissions of the parties in this matter, this court finds that the only issue for my determination is, whether the applicant has advanced sufficient reasons for extension of time.

Albeit brief, factual background is necessary for determination of this appeal. Parties to the instant application had a land dispute referred to Kainamu ward land tribunal (the trial tribunal). The center of dispute being a farm situated at Tsaayo Raat neighborhood of Kainamu village.

Each party claimed to be legal owner of the said farm. After hearing the parties, the trial tribunal decided in favour of the applicant. the respondent herein was not amused with that decision, he appealed to the DLHT on whose decision it quashed the decision of the ward land tribunal and declared the respondent the lawful owner of the suit farm.

The applicant had intended to challenge the decision of the DLHT, but he was unable to do so timely, hence application No. 81 of 2020 was lodged on which he was granted 21 days to file the said appeal out of time.

The record reveals that the applicant filed land appeal No. 76 of 2022, but it was withdrawn by the applicant's counsel for being filed out of time.

It follows therefore that this is the second application for extension of time to appeal out of time sought by the applicant.

The present application has been preferred under Section 38 (1) of the Act, which reads;

38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:

*Provided that, the High Court **may for good and sufficient cause extend the time** for filing an appeal either before or after such period of sixty days has expired.*

[Emphasis added].

From the above referred provision of the law, for an application for extension of time to succeed, the applicant must advance good and sufficient cause. The provision of the law quoted above does not define what constitutes good and sufficient cause.

In determining the same, there are factors to be considered as decided in the case of **Lyamuya Construction Company Ltd V. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 Of 2010 Court of Appeal at Arusha (Unreported. These factors are;

(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.

In the instant application the applicant claimed the delay in filing the appeal within time was caused by a technical issue as the said appeal could not be admitted in Arusha High Court Land Division. Therefore, causing the applicant to file another appeal which was then out of time, hence this application for extension of time for second time.

However, the affidavit is silent as to why the said appeal which was lodged in time was not admitted. Also, on paragraph 9 of the affidavit in support of the application it states that after the appeal was not admitted for 5 days, the appellant decided to lodge it again in the normal High Court Registry which was then admitted.

Nevertheless, the affidavit has no any annexure to support the assertion that the appeal was once filed on time but on the forum which the High Court Registry of Arusha Land Division could not be accessed. It was also necessary to have the affidavit of the registry officer to prove the same. This information was necessary for the court to gauge on the reason for the delay.

As decided in the case of **Airtel Tanzania Ltd v. Misterlight Electrical and another**, Civil Application No. 27/1 of 2021 where the court held that

the evidence in support of applicant was necessary and the name of the clerk would have been mentioned in the affidavit.

In the instant matter the affidavit did not attach such evidence which were necessary for this court to make its findings.

It has also been observed by this court that, that the applicant's appeal was withdrawn for being time barred on 18/10/2022, but the instant application was filed in this court on 25/11/2022 about 38 days.

It is stated in the affidavit in support of this application that, after the withdrawal of the appeal the applicant applied for the said order which was supplied to him on 9/11/2022. Still, the applicant has not accounted for the period from the date he was supplied with the said order to 25/11/2022 the date he filed the instant application.

The applicant was required to account on each day of the delay. The need to account for each day of delay was underscored in the case of **Bushfire Hassan v. Latina Lucia Masaya**, Civil application No. 3 of 2007 (unreported) in which it was stated that;

"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules

prescribing periods within which certain steps have to be taken.

The position was further reiterated in the decision of **Ludger Bernard Nyoni v. National Housing Corporation**, Civil Application No. 372/01 of 2018 (unreported) in which it was held that;

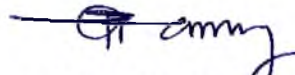
"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application"

Even if I were to agree with the applicant that there was a technical reason to delay filing this appeal, still there is a period of time which has not been accounted for by the applicant, for this court to establish there was the good and sufficient cause for the court to grant the extension of time. It is for the forgoing reasons I hold that the application lacks merits and it is hereby dismissed with costs.

It is so ordered.

DATED at Babati this 30th March, 2023.




G.N. BARTHY
JUDGE
30/3/2023

Delivered in the presence of the respondent in person and Philemon Silo the son of the applicant.