

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SUMBAWANGA**

**AT SUMBAWANGA**

**MISCELLANEOUS CIVIL APPLICATION NO. 07 OF 2022**

(Original civil case no 7 of 2021 at Mpanda District Court)

**ZAWADI SAMSONI ..... APPLICANT**

**VERSUS**

**JIHUMBI SAMIKE ..... RESPONDENT**

**12/07/2023 & 29/09/2023**

**RULING**

**MWENEMPAZI, J.**

The Applicant has filed this application under section 14(1) of Law of Limitation Act (LLA) seeking orders to extend time against the District Court decision out of time. The Respondent filed a Civil Case against the Applicant in the District Court of Mpanda with the intention recovery of Tshs. 5,000,000/= being cost incurred in defending an appeal which he had filed in the District Land and Housing Tribunal of Mpanda. In that case the District Court ordered the applicant to pay the Respondent Tshs. 2,000,000/=. The decision was delivered on the 19/09/2021.

However, upon returning home the applicant consulted the chairman of the Ward Tribunal who informed him that the District Court had no jurisdiction to entertain and determine matters concerning land disputes. He thus decided to continue pursuing his rights in the District Land and Housing Tribunal. That in his account as I have understood is the reason for applicant's delay.

The respondent is opposing the applicant was unrepresented and the respondent was being served by Mr. Laurence John. Parties were granted leave to present their case by way of written submission. The applicant in his submission has submitted in reiteration of what he had stated in the affidavit. Basically, the applicant is alleging lack of jurisdiction of the District Court to entertain land matters.

The respondent in reply is contending that they have failed to notice that there are sufficient reasons which have been adduced to persuade this Court to extend time to appeal against the decision of the District Court of Mpanda in Civil Case No. 7 of 2021.

The applicant has not disclosed the reasons for delay in his affidavit. He has cited the case of **Zuberi Athumani Mbuguni Versus National Bank of Commerce Ltd**, Civil Application No. 311/12 of 2020, Court of Appeal of Tanzania at Tanga (unreported) at page 8 it was observed:

*"But it is noteworthy that for the Court to act on any argument in an application, the same should have been reflected in the affidavit supporting the application otherwise, as rightly argued by Mr. Ngogo the allegation of illegality, in the instant application come from Mr. Baloni oral submission hence it was argument from the bar not deserving any consideration".*

The counsel for the respondent submitted and argued that in the present application the ground of jurisdiction raised collapses as it has no base to stand.

In the application for extension of time the respondent is duty bound to account for each day of delay. The counsel cited the case of **Wambele Mtumwa Shahemiwe Versus Mohamed Hamis**, Civil Reference No. 8 of 2016 Court of Appeal of Tanzania at Dar es Salaam (unreported) and **Ultimate Security (T) Ltd Versus Chande Ally Lugugile and Others**, Civil Application No. 428/01, Court of Appeal of Tanzania at Dar es Salaam (unreported) in the latter case the Court held that:

*"There is a consideration body of case law in this area to the effect that in an application for extension of*

*time, the application is duty bound to account for each day of delay”.*

The counsel for the respondent has submitted that the applicant has failed to account for each day of delay from 17/09/2021 when the case was determined until May 2022 when this application was filed. The case of **Kahungu Kibhabhi Versus Kabwindagi Kayugito**, Misc. Land Application No. 3 of 2022, High Court of Tanzania at Kigoma is favouring the respondent because in it, Hon. Justice Mayanda dismissed the application for extension of time to failure to account for each day of delay.

The counsel also has submitted that the applicant ought to have attached the affidavit of the chairperson of the Ward Tribunal who informed him that the District Court has no jurisdiction in Land matters so he should pursue his rights in the District Land and Housing Tribunal. The counsel thus prayed that the application be dismissed with costs.

I have read the application and the submission. The question is whether the applicant has shown sufficient reasons for this Court exercise its discretion to extend time. It may be drawn from the affidavit as well as the submission that the applicant has not shown any

other reason for delay but for the fact that the district Court has no jurisdiction to deal with matters of land disputes.

In the affidavit accompanying the application, paragraph 4 the applicant has submitted that he knew of the legal position that the District Court lacks jurisdiction. However, his expansion and or clarification of the same he has submitted that by his advocate did not tell him his rights and advocate Kifunda is the one who advised him to lodge an appeal.

It has been argued by the counsel for the respondent that the applicant ought to have annexed an affidavit from the chairman to substantiate the fact of the Ward Tribunal. He argues that averment remains to be hearsay thus he has prayed that the application be dismissed.

In the case of **Lyamuya Construction Company Ltd Versus Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, Court of Appeal of Tanzania at Arusha at page 6 it was held:

*"As a matter of general principle, it is in the discretion of the court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not*

*according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated: -*

- (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 lake*
- (d) If the Court feels that there are 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 same case it was observed further the point of law of importance such as legality of the decision sought to be challenged could constitute a sufficient reason for extension of time.

The applicant has a raised an issue of the jurisdiction as a point of concern in his intended appeal, I have the opinion that gives the genesis of the problem, there is a point of law on the face of record to be dealt with by the Court though not elaborated further by the applicant. Under the circumstances I find sufficient reason to extend time for filing an

appeal out of a time. The applicant is given 30 days from today to file an appeal. I give no orders to costs.

It is ordered accordingly.

Dated and delivered at Sumbawanga this 29<sup>th</sup> day of September, 2023.



**T.M. MWENEMPAZI**

**JUDGE**

Ruling delivered in Court in the presence of Mr. Laurence John learned advocate who was at Mpanda via Video Conference and absence of the applicant.



**T.M. MWENEMPAZI**

**JUDGE**

**29/09/2023**