

IN THE HIGH COURT OF TANZANIA
DODOMA SUB REGISTRY
AT DODOMA

MISC. LAND APPLICATION NO. 295 OF 2024

(Arising from Misc Land Application Cause No.68 of 2022 High Court of Tanzania at Dodoma District Registry; Arising from Land Appeal No. 64 of 2021 of the District Land and Housing Tribunal for Kondoa; and Original from Land Case No. 28 of 2021 of Goima Ward Tribunal)

AIJA RASHID NYAMBA.....APPLICANT

VERSUS

JUMA JOSEPH DUDU.....RESPONDENT

RULING

Date of last Order: 11/03/2024

Date of the Ruling: 08/04/2024

LONGOPA, J.:

This is an application for extension of time to extend time to file an appeal out of time against a decision of the District Land and Housing Tribunal for Kondoa which had confirmed the decision of the Ward Tribunal for Goima.

The application is made under Section 93 of the Civil Procedure Code, Cap 33 R.E. 2019 for three orders namely, that:

- 1. This honourable Court be pleased to enlarge time to the applicant to file an appeal, the time which expired*



2. after being granted on 29/09/2023 in Misc. Land Application No. 68 of 2022 by Hon. Khalfan, J. on grounds that:

(i) the applicant obtained the decision in Misc Land Application No. 68 of 2022 on 20/10/2023

(ii) on 07/11/2023 the applicant was assaulted and bruised on her body to make it difficult to appeal on time granted

3. Costs of this application be provided for

4. Any other relief(s) this Honourable Court deem fit to grant.

In affidavit of the applicant, Aija Rashid Nyamba it is affirmed and stated that: First, the applicant applied for extension of time and was granted sixty (60) days within which to file an appeal from 22/09/2023. Second, the applicant did follow up for the copy of the order which was issued on 20/10/2023. Third, that on 07/11/2023 before lapse of time to appeal the applicant was assaulted and bruised by blunt object thus issued with Police Form No 3 (PF 3) to attend medical treatment of several parts of her body resulting into failure to appeal timely. Fourth, that on 27/12/2023 when she got little relief and made follow up found time to file the appeal had expired. Fifth, that it is in the interest of justice for this application to be heard on merits and if the same shall not be allowed the applicant is likely to suffer irreparable loss of her basic rights. Sixth, if the application is not granted then applicant shall suffer an irreparable loss and will occasion miscarriage of justice.

On 11/03/2024, the applicant and respondent appeared before me for viva voce submission on the ground for this application. Both parties fended for themselves as neither of them was represented.

The applicant reiterated that she was granted extension of time for sixty (60) days running from 22/09/2023 and she was prevented by a good cause that is assault that resulted into serious bruises. She had to attend to medical treatment. It was submission of the applicant that she got relief sometimes towards the end of December 2023 thus this application.

It was further averred that she had follow up clinics at the District Hospital of Chemba throughout the month of November 2023 and it was her view that she had a good and valid reason for failure to act timely. According to her submission, she was prevented by incapacitation due to assault sustained. Accordingly, she could not walk thus it was difficult to handle the appeal at the time of indisposition.

The respondent on the other hand vehemently refuted the assertion by the applicant. It was submitted that the applicant was not seriously sick except that she thought that she had won the case by the grant of extension of time by the High Court on 22/09/2023 while the truth was being given extra time to do the needful i.e. filing an appeal.

It was argued that applicant had all the time of 60 days to file an appeal, but she failed to utilize such time appropriately. This is because there is no evidence that she was seriously sick to an extent of failing to walk in handling the appeal. Thus, it was the respondent's view that the

application is frivolous and unsubstantiated as there were no reasons for the failure to act timely.

It was a further assertion that the applicant is not willing to ensure that this matter is finalised as she was supposed to act timely but deliberately, she decided not to. The application therefore lacks merits. Furthermore, the prolonged time in this matter causes of a lot of disturbances on the part of the respondent. That was all the submission of the respondent.

In short rejoinder, the applicant stated that her health is not fine as she had been seriously injured in the attack/ assault and attended medication. The decision of the High Court to allow the extension of time was not availed timely, that is why she failed to appeal timely according to her version of submission.

It is true that extension of time may be granted when there is a good cause. The Civil Procedure Code, Cap. 33 R.E. 2019 upon which this application is preferred states that:

93. Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Generally, this Court is empowered to extend time on its discretion. The applicant had applied and granted extension of time on 22/09/2023 under Section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019. It was not time set under the Civil Procedure Code as the section upon which this application is founded. The Law of Limitation Act, Cap 89 R.E 2019 cannot fall within the matters prescribed or allowed under the Code. The section presupposes that such time was set or granted within the ambits of the Civil Procedure Code.

I am aware, however, that Civil Procedure Code is the governing procedural law for matters that are before the High Court in civil proceedings generally. It may be appropriate for this Court to consider that extension of time in Misc Land Application No. 68 of 2022 dated 22/09/2023 may be considered to fall within the meaning of the matters prescribed or allowed under the Civil Procedure Code. The main issue that must be answered is whether the applicant has demonstrated a good cause to warrant extension of time to file an appeal out of time after expiry of 60 days originally granted.

Extension of time for filing a matter out of time calls for exercise of discretion of the Court. It is a trite law that the applicant must put material evidence before the Court which will persuade it to exercise its discretion in favour of an extension of time. He must show a good and sufficient cause for the Court to enlarge time to file a notice of intention to appeal.

This position was demonstrated in the case of **Juma Shomari versus Kabwere Mambo**, (Civil Application 330 of 2020) [2021] TZCA 63 (4 March 2021) (TANZLII), where the Court of Appeal observed at page 3 that:

*Many time, in its pronouncements, this Court had occasions to interpret this provision of the law and insisted that the applicant should show a good cause before time can be extended for doing a certain act. Few of the decisions are; **Abdallah Salanga and 63 Others v. Tanzania Harbours Authority**, Civil Reference No.08 of 2003 and **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014 (both unreported). However, what constitutes good cause has not been codified although the Court has, in various instances, stated a number of factors to be considered. These are; whether or not the application has been brought promptly; a valid explanation for the delay and whether there was diligence on the part of the applicant.*

It is clear from the affidavit and submissions that the applicant was granted a period of sixty (60) days within which to file an appeal out of time. That time stated running on 22/09/2023 when the extension of time decision was made. It was expected that applicant would act diligently and timely to ensure that an appeal is filed within extended time.

In **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania** (Civil Application 2 of 2010) [2011] TZCA 4 (3 October 2011) (TANZLII), at pages 6-7, the Court of Appeal stated that:

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 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.

The parties submissions are at one that extension of time for sixty (60) days was granted on 22/09/2023 and the same would expire sometimes on 21/11/2013 if the applicant was to act diligently. The only point of departure is whether the applicant has adduced a reasonable and

valid cause to warrant a further extension of time. I am of the view that there is no good cause to warrant a further extension of time.

Despite attaching PF 3 indicating that applicant sustained bruises because of alleged assault, there is no sufficient evidence on record that at all the material time from the date of alleged attack she was not able to act as she was indisposed. Absence of such evidence on record makes it difficult and unpalatable to this Court to grant a further extension of time.

In the case of **Ramadhani Kipanga & Another vs Peter Peter Junior & Another** (Civil Application 172 of 2019) [2019] TZCA 557 (25 July 2019) (TANZLII), the Court of Appeal stated that:

In exercising its discretion to grant extension of time, the Court considers the following crucial factors; the length of delay, the reason for the delay and degree of prejudice that the respondent may suffer if the application is granted. It is therefore the duty of the applicant to provide the relevant material in order for the Court to exercise its discretion. See the Regional Manager Tanroads Kagera v Ruaha Concrete Company Limited, Civil Application No. 96 of 2007, (unreported).

I concur with the respondent's submission that there is no good cause for this Court to allow a further extension of time to file an appeal out of time given that the applicant failed to utilize the sixty (60) days



granted to her vide a ruling dated 22/09/2023 in Misc Land Application No.68 of 2022. The applicant has failed to account for every day of delay as required by the law as she only preferred this application after expiry of more than 35 days since the last day of the permitted extension of sixty days.

Granting a further extension of time on flimsy reasons, it would be a defeat of justice and against a public policy that litigations should come to an end. In the case of **Johnson Amir Garuma vs The Attorney General & Others** (Civil Appeal No. 206 of 2018) [2023] TZCA 116 (15 March 2023) (TANZLII), the Court of Appeal lucidly and emphatically stated that:

It is a public policy and interest that litigation should not continue forever. Litigation must come to an end so that the litigants will be able to focus on other important things in their life. The provisions of section 3 (1) of the Act is one of the ways in which the state can strike a balance

between individual's right to instituting the suit and the social control in terms of time limit.

Having demonstrated that applicant in the instant application had not ably reiterated good cause to warrant extension of time, I am inclined to find out that delays in file an appeal within the sixty (60) days extended by the High Court in Misc Land Application No. 68 of 2022 demonstrates

applicant's sloppiness or negligence to prosecute her case before the court. As a result, the application for further extension of time is bound to fail.

In the circumstances of this application, I find that the applicant has failed to prove to the satisfaction of this Court that she was prevented by a sufficient or good cause to act timely. There is no valid reason whatsoever to allow such extension of time in absence of material facts to substantiate exercise of the discretion of this Court.

The application for extension of time to file an appeal out of time after expiry of the original 60 days granted in Misc Land Application No. 68 of 2022 dated 22/09/2023 is hereby dismissed for lack of merits. Costs shall be in cause.

It is so ordered.

DATED at DODOMA this 8th day of April 2024



Longopa
E.E. LONGOPA
JUDGE
08/04/2024