

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 54 OF 2023

(Arising from Land Application No. 21 of 2021 in the District Land and Housing Tribunal for Mbulu at Dangobesh)

CORNEL PANGA.....1ST APPLICANT
JEREMIA JOSHUA.....2ND APPLICANT
CRESENT OMBAY.....3RD APPLICANT
ASHA RAMADHANI.....4TH APPLICANT
SAMWEL ZAKARIA.....5TH APPLICANT
DOROTEA QAMARA.....6TH APPLICANT
ADELINA TARIMO.....7TH APPLICANT

VERSUS

BARAZA LA WADHAMINI WA CHAMA CHA MAPINDUZI.....RESPONDENT

RULING

12th December, 2023 & 9th February 2024

Kahyoza, J.:

This is a ruling in respect of an application for extension of time within which to allow **Cornel Panga, Jeremia Joshua, Crescent Ombay, Asha Ramadhani, Samwel Zakaria, Dorotea Qamara** and **Adelina Tarimo** (the applicants) to file an application to set aside dismissal order met by the

District Land and Housing Tribunal for Mbulu at Dangobesh (the DHLT) in Land Application No. 21 of 2021 dated 15/05/2023.

A brief background from the trial tribunal record is that; on 15/05/2023 when the said application before the DLHT was called for hearing as scheduled. Mr. Richard Manyota, advocate for the applicants was absent. It was alleged by the 5th applicant (the then 5th applicant at the DLHT) that their advocate had an excuse as he was attending criminal sessions case before this Court, Arusha Sub-registry. The trial tribunal was not pleased with the said excuse, as a result the application before it was dismissed under Regulation 13 (2) & (3) of **the Land Disputes (The District Land and Housing Tribunal) Regulations** GN. 173 of 2003 (The Regulations). And, it was apparent on the reasoning of the DLHT that the said order was imminent as the excuse was not backed by a summons or Cause list.

In the supporting affidavit, I gather only one reason advanced for the extension of time, which is:

"6. That, immediately after the aforesaid case was dismissed for non-appearance, on 1st June 2023 the Counsel for the applicants took effort to make an application for restoration of the said case in the same tribunal in Miscellaneous Land Application No. 17 of 2023 and the same was also dismissed."

It is unfortunate that the counter affidavit it was deponed generally that

"6. That, the contents of paragraph 6 of the affidavit by the applicant are hereby disputed."

The hearing of this application was by written submissions. Parties adhered to the scheduling orders. Mr. Richard Evance Manyota, Advocate, appeared for the applicants and Ms. Hamida Msangi, Advocate, for the respondent.

As whether the applicants have adduced good cause for extension of time, **Mr. Manyota**, the applicants' advocate, submitted that they delayed because while prosecution Miscellaneous Land Application No. 17 of 2023 before the DLHT seeking to have the dismissal order set aside.

On part of the respondent, **Ms. Msangi**, was emphatic that the applicant advanced no good cause for extension of time, citing the rule in **Sebastian Ndaula vrs. Grace Rwamafa**, Civil Application NO. 4 of 2024 (unreported).

On the outset, let it be known that the proper nomenclature of this application ought to be an application for an extension of time within which to file an appeal. Regulation 13 (4) of the Regulations provides-

"The Tribunal shall not have powers to set aside its own order made under sub-regulation (2) and any aggrieved party may appeal to the High Court (Land Division)."

It is crystal clear that for an aggrieved party on a dismissal order, he should channel the grievances by way of an appeal to the High Court not an application to set aside dismissal order at the trial tribunal.

The records bears testimony that the dismissal order was issued on the 15/05/2023, an attempt to set aside dismissal order was made to the DLHT on or before 15/06/2023 and the same was withdrawn by consent on the 19/06/2023. This application was duly filed on the 17/07/2023, it is obvious that the applicants are time barred to file an appeal, as provided for under section 41(2) of **the Land Disputes Court Act**, Cap 216 R.E 2019 which provides: -

"41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

Now, the pertinent issue for determination by this court is ***whether the applicants have established good cause for this court to extend time within which to file an appeal to this court.***

It is well settled that, 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. In **Lyamuya Construction Co Ltd vrs. Board of Registered of Young Womens Christian Association of Tanzania** (Civil Application 2 of 2010) 2011 TZCA 4 (3 October 2011) the following guidelines were formulated in considering extension of time-

- "(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 summons and the Cause list annexed proved that the applicants' advocate was engaged in Criminal Sessions conducted by this court at

Arusha Sub-registry from the 8th day of May to the 5th day of June, 2023, and on or before the 15/06/2023 Mr. Manyota had already filed Misc. Land Application No. 17 of 2023 attempting to fault the dismissal order. It is not availed by records on when did the copy of said order was supplied to the applicants, even if the said 45 days started to run from the 15/05/2023 when the order was issued, of which is not established, then, they lapsed on 30/06/2023, then to the date this application was filed on line (since the issuance of control number is not on their capacity), then applicants are bound to account for 12 days of "delay". For the fact that it is not known from records as to when the applicants were furnished with necessary documents to enable them to file an appeal and the fact that the applicants made attempts to challenge the dismissal order, though not a proper procedure, I find refuge in the **Lamuya's case** to extend time within which the applicants to file their appeal if they wish to do so, as the applicants' "delay" was not inordinate and they were diligent in taking actions to fault the dismissal order.

I am of the firm view that the applicants have assigned good reason for delay as to great extent the delay was technical. He delayed because he filed an application seeking to set aside the dismissal order instead of

appealing against the dismissal order. I, therefore, grant the application and extend time for the applicants to appeal to this Court for 30 days from the date of delivery of this ruling. I make no order for costs as the applicants and their advocate are to blame for not timely and properly informing the Tribunal that the advocate was assigned a dock brief.

It is ordered accordingly.

Dated at Babati this 9th day of February, 2024.



J. R. Kahyoza
Judge

Court: Ruling delivered in the absence of the parties who were informed that they will be connected when it due. Efforts to connect them to the virtual court proved futile. B/C Ms. Fatina Haymale(RMA) present.

J. R. Kahyoza
Judge
09/02/2024