

IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

MISCELLANEOUS LAND APPLICATION NO. 79 OF 2023

(Arising from Order of this Honourable Court in Land Appeal No 02 of 2023 before Hon Hassan, J.)

MATIKA SAMWEL MAZENGO..... APPLICANT

VERSUS

NANCY SAMWEL MAZENGO 1ST RESPONDENT

(As a Gurdian of Matika Samwel Mazengo)

NESTORY ALOYCE KWAY.....2ND RESPONDENT

ANNA NESTORY KWAY.....3RD RESPONDENT

RULING

Date of last order. 08/02/ 2024

Date of Ruling. 12/02/2024

LONGOPA, J.:

This is an application for enlargement of time to file an appeal made under section 41(2) of the Land Disputes Courts Act, Cap 216 R.E. 2019, Section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019; and Section 95 of the Civil Procedure Code, Cap 33 R.E. 2019. It seeks the Court to enlarge time within which to file an appeal challenging a decision of District Land and Housing Tribunal.

The parties were applicant and respondents respectively before the District Land and Housing Tribunal for Dodoma in Land Application No. 114 of 2022 where the applicant sought declaratory orders that: applicant's interests were not protected during the sale of the suit premise; the 1st respondent acted illegally to sale the said suit premise; the sale between 1st respondent to 2nd and 3rd respondents was tainted with illegality thus void ab initio; order of demolition of several renovations made by the respondents in the premise; permanent injunction against the respondents or any other person action on their instructions; general damages and costs of the case.

This arose out of the fact that the applicant was a minor by the time the disputed premise was bequeathed to her and the house was put under the guardianship of the 1st respondent. The District Land and Housing Tribunal struck out the application on ground that the applicant lacked locus standi and cause of action against the 1st Respondent. It is this decision that the applicant has been trying to challenge in the Land Appeal No. 02 of 2023 by order dated 3/10/2023 was withdrawn with leave to refile. As a result, time for filing an appeal had lapsed necessitating the applicant to file this application. The application prays for the following orders, namely:

- (a) That, this Honourable Court be pleased to enlarge time within which to file an appeal against ruling of the District Land and Housing Tribunal in Land Application No. 114 of 2022*
- (b) Costs of this suit.*
- (c) Any other relief this Court deem just to grant.*

The application is supported by the affidavit of Matika Samwel Mazengo, the applicant. The contents of the affidavit reveal circumstances leading to the application for extension of time. I shall reproduce the same for easy of reference as follow:

4. That, after heard the said objections, on 21st November 2022 the District Land and Housing Tribunal of Dodoma ruled in favour of the respondents through its ruling erroneously dated 21st November 2022. Copies of the said ruling and drawn order are attached are attached and collectively marked as annexure M2 for the same to form part of the affidavit.

5. That, aggrieved by the said ruling, on the same day (21st November 2022) the applicant through the service of his advocates wrote a letter to the Honourable chairman of the District Land and Housing Tribunal of Dodoma at Dodoma requested certified copy of the said ruling. Copy of the said letter is attached herewith and marked as annexure M3 for the same to form part of this affidavit.

6. That, up to 3rd January 2023 the applicant was not yet supplied with a copy of the ruling by the District Land and Housing Tribunal of Dodoma, as a result she honestly and bonafide filed, well within time, an appeal before this Honourable Court through Judiciary Online Case



Management System and paid the court fees on the same day. Copy of Petition of Appeal and exchequer receipt is attached herewith and collectively marked as annexure M4 for the same to form part of this affidavit.

7. That, the said appeal was registered as Land Appeal No 02 of 2023 and assigned to Honourable Hassan, J.

8. That, on 18th August 2023 the applicant was supplied with the ruling accompanied with drawn order by the District Land and Housing Tribunal of Dodoma at Dodoma, where she was still prosecuting Land Appeal No 02 of 2023, before this Honourable Court.

9. That, while honestly pursuing such appeal, on 3rd October 2023 this Honourable Court invited the parties to address it on the competence of the appeal filed without being accompanied with copies of ruling and drawn order. Whereby, the applicant's Counsel agreed with the Court that, the appeal was filed prematurely and the same was marked withdrawn with leave to refile. Copy of the order of this Honourable Court to that effect is attached herewith and marked as annexure M5 for the same to form part of this affidavit.

10. That, the applicant's advocate after receiving the instructions from the applicant, on 6th October 2023 wrote a letter to this Honourable Court requesting for certified copy of abovementioned Court's order and the same became ready for collection on 10th October 2023. Copy of the said letter is attached herewith and marked as annexure M6 for the same to form part of this affidavit.

11. That, at all material times as from 21st November 2022 when the applicant initiated and later filed the said appeal before this Court, to 3rd October 2023 when the same was withdrawn with leave to refile, the applicant was honestly and bonafide prosecute the said appeal. From 4th October 2023 to 5th October 2023 the applicant was in consultation with his advocates, and from 6th October 2023 to 10th October 2023 the applicant requested and obtained an order of the Court in respect of Land Appeal No 02 of 2022, and thereafter the applicant through her advocates drafted and filed the instant application.

12. That, the delay was never caused by negligence of the applicant as such unless this Honourable Court enlarges time within which to file an appeal and thereby give chance to the applicant and respondents to be heard on merits.

On 8th February 2024 when the matter came for hearing, the applicant enjoyed legal services of Mr. Josephat Mbeba, learned advocate and the respondent enjoyed legal services of Ms. Catherine Wambura, learned advocate. The Counsel for the applicant informed the Court that the applicant has been served with notice to concede the application from the respondent dated 31st January 2024. He prayed that this Honourable Court be pleased to grant the application as per prayers contained in the Chamber Summons supported by the affidavit of the applicant without costs.

The learned advocate for the respondent informed the Court that the respondents are not objecting or contesting the application. The counsel for respondent confirmed that respondents are conceding that this application be granted.

Having heard both sides, this Court is required to decide whether the application for enlargement of time should be granted or not. I shall commence the analysis by analysing the law governing appeals from the District Land and Housing Tribunal to the High Court. The Land Disputes Courts Act, Cap 216 R.E. 2019 cater for timing of appeals of this nature. It provides that:

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.

According to this provision, time for filing an appeal to the High Court for a decision of District Land and Housing Tribunal is forty-five days reckoned from the date of the decision. Failure to adhere to this timeline would make such appeal time barred for laxity to take necessary action by the intended appellant.

It is noted that the decision of the District Land and Housing Tribunal was made on 21st November 2022. This application was filed on 11th October 2023 which is more than 320 days from the date of the decision which is intended to be challenged. Ordinarily, the appeal would have been preferred before the end of month of January 2023 to comply with forty-five days rule.

However, the law gives a leeway that on appropriate circumstances the High Court is empowered to extend time to file such an appeal. Such exercise of powers of the High Court must be guided by proof by the intended appellant that a good cause which prevented acting timeously exists.

The issue of good cause for extension of time is also the spirit of section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019. The Section provides as follows:

14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.

Thus, demonstrating sufficient cause or reasonable cause is the main factor to consider in determining extension of time for institution of an appeal or application. The instant application for extension of time to file an appeal is a fit case as it can be accommodated under this provision of the Law of Limitation Act.

In the case of **TANESCO vs Mufungo Leonard Majura & Others** (Civil Application 94 of 2016) [2017] TZCA 239 (5 June 2017), at pages 9-10, observed that:

In line with what has been stipulated in the above quoted provision of law, what has to be considered by the Court before it can grant or refuse an application for extension of time is good cause. And what constitutes good cause has



*never been defined in any provision of law. The only available guidance is from case law. In the case of **the Regional Manager, Tanroads Kagera Vs Ruaha Concrete Company**, Civil Application No. 96 of 2007 (unreported), this Court had an occasion of discussing sufficient cause, contained in Rule 8 of the repealed Court of Appeal Rules, 1979, which is similar to good cause contained in Rule 10 of the current Court of Appeal Rules, 2009, when it stated thus: "What constitutes sufficient cause cannot be laid down by any hard and fast rules. This must be determined by reference to all the circumstances of each particular case. This means that the applicant must place before the Court material which will move the Court to exercise its judicial discretion in order to extend the time limited by the rules.*

Indeed, a good cause depends on the prevailing circumstances of a particular case. It may range from pursuit of rights through judicial processes, inability to act due to sickness or caused by other reasons, illegality of the decision to be challenged, to mention but few.

In the case of **Tanzania Coffee Board vs Rombo Millers Ltd** (Civil Application 13 of 2015) [2015] TZCA 327 (6 October 2015), the Court emphasized the need to account for every day of delay when seeking extension of time. The Court of Appeal observed that:

*The decision of the Court in **Bushiri Hassan vs. Latifa Lukio Mashayo** (supra) which Mr. Maro cited, correctly articulates the settled law that dismissal of the application is the consequence befalling an applicant seeking an extension of time who fails to account for every day of delay. The Court took a similar position in **Crispian Juma Mkude v R.** Criminal Application No. 34 of 2012 (unreported) wherein the Court referred to its decision in **Bariki Israel vs. R.** Criminal Application No. 4 of 2011 (unreported) where the Court said:-From the foregoing, no good cause for extension of time can be said to have been shown in the circumstances of this application where, the applicant has not accounted each day of delay after receiving a signed notice of appeal on 11/12/2014 but filed a Motion seeking an extension of time 111 days later on 2/4/2015.*

It is a settled law that where the applicant fails to account for each day of delay that application is bound to suffer dismissal for laxity. Court always considers the duration of delay, inaction of the prospective appellant to act, lack of negligence or sloppiness, or existence of sufficient reasons including issues of point of law of sufficient importance, among other factors to determine whether to grant the application or otherwise.



My close perusal of the affidavit in support of this application is premised on two aspects, namely the failure by the District Land and Housing Tribunal to issue the certified copies of the ruling and drawn order timely as well as honestly and bona fide pursuit of the appeal at the High Court of Tanzania, Dodoma Sub Registry in Land Appeal No. 02 of 2023.

The affidavit discloses that time from 3rd January 2023 to 3rd October 2023 was used by the applicant in pursuing an appeal before the High Court honestly and bonafide concerning the same parties to this application. However, that appeal was found to be incompetent for failure to attach the ruling and drawn order appealed against as at the time of its institution the District Land and Housing Tribunal has not issued the same.

I am also aware that section 21(1) of the Law of Limitation Act, Cap 89 R.E.2019 allows exclusion of time, when the applicant with due diligence and in good faith was pursuing another civil proceeding, whether in a court with original or appellate jurisdiction where the proceeding is founded in the same cause of action. All the time spent in pursuing that legal action should be excluded in reckoning time.

In the case of **Tanzania Rent a Car Limited vs Peter Kimuhu** (Civil Reference No. 28 of 2019) [2023] TZCA 94 (10 March 2023), the Court of Appeal observed that:

*Although it was rejected by the Single Justice for not constituting good cause, we are of the considered view that in the circumstance of this matter it does. **The efforts which were made by the applicant above indicate that the applicant regardless of whether she took a right or wrong course of action or whether she was represented or not, she was busy in pursuit of her rights. In other words, she did not lie idle.** In the case of **Mary Mchome Mbwambo and Another v. Mbeya Cement Company Limited**, Civil Application No 271/10 of 2016 (unreported), the Court held that where an applicant has been in court's corridors in 12 pursuit of his rights and consequently delays to take appropriate steps, that pursuit may constitute good cause for the purposes of extension of time.*

The contents of paragraphs 6, 7, 9, 10 and 11 of the applicant's affidavit reveal that the applicant was pre-occupied in pursuing appeal at the High Court which unfortunately was withdrawn with leave to refile due to failure to be accompanied by ruling and drawn order of the District Land and Housing Tribunal.

The applicant has provided a thorough account on each day of delay. She provided explanation that time from January 2023 to 3rd October 2023 the applicant was pursuing her rights in Land Appeal No 02 of 2023 in the



High Court. Also, from 3rd October 2023 she was consulting with her lawyers while from 6th October 2023 to 10th October 2023 was spent to make follow ups of the Order of the High Court dated 3rd October 2023 that allowed withdraw with leave to refile.

The applicant did not sleep on her right to pursue the appeal. She acted properly as a bonafide litigant who was pursuing her rights through Land Appeal No. 02 of 2023 which was instituted well within time. The only incompetency of that appeal was absence of accompanying documents namely ruling and drawn order which were not forthcoming from the District Land and Housing Tribunal. The applicant took all necessary steps to pursue her rights without any sense of laxity.

In totality of events, the applicant diligently handled this matter and managed to account fully for every day of delay. A thorough account of every day of delay demonstrated by the applicant indicates seriousness of the applicant in pursuit of her rights. This is a fit application to be granted.

Further, the withdrawal of the Land Appeal No. 02 of 2023 was with leave to refile the appeal. It is important for this Court to allow this application which will facilitate the applicant to properly pursue her rights to challenge the decision of the District Land and Housing Tribunal. This is coupled by the fact that ruling and drawn order of the Tribunal which were not available during the filing of Land Appeal No.02 of 2023. However, the applicant is now in possession of ruling and drawn order.



In the upshot, application for extension of time is allowed. **The applicant is granted a total of twenty (20) days** within which to file an appeal from the date of this decision. Each party shall bear its costs.

It is so ordered.

DATED at DODOMA this 12th day of February 2024.



Longopa
E. E. LONGOPA
JUDGE
12/02/2024.