IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 853 OF 2018

(Originating from Misc. Land Application No. 73 of 2013)

ESTHER MAWINDA ..... APPLICANT

VERSUS

KHADIJA MUNDA ..... RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The application is for extension of time within which the applicant may lodge her appeal against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala (The Tribunal) in Land Application No. 73/2013 delivered on the 29/09/2016. The application was lodged under the provisions of Section 41(2) of the Land Disputes Courts Act, No. 2 of 2002 as amended by the Written Laws (Misc. Amendments) (No. 2) Act, 2016 (collectively referred to as the Act) and was supported by an affidavit of the applicant Esther Mawinda dated 08/06/2018. On the 27/02/2019, the Respondents filed notice of preliminary objection on point of law that:

- That this suit is hopelessly incompetent for being time barred
- The court is not properly moved for citing wrong provision of the law

On the 22/05/2019, the respondent abandoned the first point of objection hence we are remained with only one point of objection. Before this court Mr. Amani Joachim, learned Counsel represented the applicant while the respondent was represented by Mr. James Ndetabula, learned Counsel.

In this ruling, I had asked the parties to make their cross submissions in support of both the preliminary points of law raised and the substantive application so that I will first determine the points of law and in case it doesn't dispose the application, then I will proceed to determine the merits of the main application. While making his submissions in support of the objection, Mr. Ndetabula submitted that for a court to entertain a certain matter, it should be properly moved by a party and that in the instant case, the applicant has failed to do so. He argued that the current application was made under Section 41(2) of the Act while this is an application and not an appeal. Further that the proper Section to have been cited was Section 14(1) of the Law of Limitation Act, Cap. 89 R.E 2002 (The Limitation Act). His argument was mainly on the absence of the word "an application" in the Section 41(2) of the Act which word is in the Section 14(1) of the Limitation Act.

In reply, Mr. Joachim submitted that when an applicant files an application for extension of time to appeal, the applicant is praying to extend "the time tome within which to file an appeal" and not to extend time to file an application. He aergued that before the Misc. Amendments of Cap. 216, the applicable law was the limitation Act, and that even then, these applications were not granted merely because of the wording "application". Further that if we were to take

Mr. Ndetabula's argument, then in this instance the applicant would have been applying or extension of time to file an application for extension of time. Mr. Joachim submitted that the respondent's arguments are confusing as one may not be able to apply for extension of time to appeal without filing an application to so do.

Mr. Joachim then submitted that it is a cardinal rule of statute interpretation inter alia that the intention of the Legislature must be found by reading the statute as a whole. Every clause needs to be construed with reference to the context and other clauses of the Act, to arrive to a meaningful purpose of the whole statute relating to the subject-matter. Strict interpretation of the law without bearing in mind the intention of the legislature may lead the law to absurdity. He argued that the legislature never meant to avail litigants with an avenue to extend time for several matters but then put a time limit in such application while in the provision itself demands the Applicant to account for each day of delay with proof.

He argued further that on the same energy, section 41(2) was an amendment which came after a lacuna in the Courts (land disputes settlements) Act, 2002 which forced litigants to use The Law of Limitation Act. That Section 41(2) Written Laws (Miscellaneous Amendments) Act (No. 2) of 2016, avails the litigants to pray for the court to extend time within which to file an appeal out of time and since there is now a specific law, litigants have to cite this specific law not the blanket law that is provided by the Law of Limitation Act.

Let me begin where Mr. Joachim has ended, on the rules of interpretation of statutes. As correctly submitted by Mr. Joachim,

words in a statute have to read in whole and are to be construed with reference to the context and other clauses of the Act, to arrive to a meaningful purpose of the whole statute relating to the subject-matter in relation to the intention of the legislature in enacting a particular law. The Misc. Amendments of 2016 vide Act (No. 2) of 2016 intended to make a provision within the ambit of the Cap. 216 to allow parties to apply for extension of time to appeal from the decisions of the District Land and Housing Tribunal in their original jurisdiction without borrowing the provisions from other laws.

As for Mr. Ndetabula's argument that Section 14(1) of the Limitation Act would have been the proper provision, indeed the gist of the Section 14(1) is that the court may extend time where the party is late to file an appeal or an application, the two elements being separable. For instance, a party may be late to file an application for revision, then under the provisions of Section 14(1) that time may be extended. While in appeal, the court may also extend time under Section 14(1). However, I think it has slipped Mr. Ndetabula's mind that however it is that the party wishes to move the court to extend time, be it to file an appeal or to file an application, the court is to be moved by an application in form of a Chamber Summons supported by an affidavit. Hence in order to move the court to extend time, an application is inevitable. The question to be determined by the court being only whether sufficient reasons have been adduced to make the court extend the time. As for the current case, the applicant is out of time to file an appeal and has lodged this application under the provisions of Section 41(2) of the Act because that is the provision that allows the

court to extend time to lodge an appeal from the decision of the tribunal. Section 41 (2) reads as follows

> *"(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 good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days."*

Indeed the Section does not provide extension of time to file an application but an appeal. I have taken some few minutes to wonder what the interpretation of Section 41(2) of the Act is to Mr. Ndetabula or how he expects the court to be moved under Section 41(2) of the Act, by an appeal if not by an application. The wording is so obvious that the court may extend time for a party to appeal and the only way for a party to do so is by filing an application like the one at hand.

With due respect, all his cited cases re irrelevant because they are talking of a situation where the court is wrongly moved which is not the case at hand. That said, the preliminary objection raised is without merits and is hereby overruled.

Going to the merits of the application, the reason for the delay as advanced by Mr. Joachim are that the applicant fell sick around November 2016 while the limitation period ended on 02/12/2016. That the applicant is a victim of arthritis, a painful disease and was bedridden until she was admitted for formal treatment from November 2016 a treatment which continued for 5 months to reduce swelling on her knees and ankle (Annexure 3). Further that when the applicant dragged herself to the Legal Aid Clinic on 30/11/2016 the same was

closed and reopened on 06/02/2017. The applicant attached an affidavit of advocate Reginald Martin who at the time was assisting the applicant (Annexure 4).

Mr. Joachim submitted further that the applicant managed to lodge a Misc. Land Application No. 370/2017 which was struck out on 02/05/2018 hence this application. In summary Mr. Joachim's advanced reason for the delay were the sickness of the applicant and the closure of Legal Aid Clinic.

In reply, Mr. Ndetabula opposed the application submitting that the judgment was delivered on 29/09/2016 hence the 45 days period of limitation ended on 13/11/2016 and the application was lodged on 31/08/2018 which is 608 days from the date of the decision. He argued that even if the court is to believe that the applicant was sick till April 2017, she has not explained the reason for the delay to 31/08/2018 when the application was filed. He submitted further the other application was struck out on 02/05/2018 but the current application was filed on 31/08/2018 and no good cause has been shown. He concluded that no good cause for the delay had been shown by the applicant and cited the case of Hadija Adamu Vs. Godbless Tumba, Civil Application No. 14/2013 where the court of appeal sitting in Arusha dismissed the application for want of good cause for the delay. He hence prayed that the application be dismissed with costs.

I have gone through the records of this application in order to ratify myself on whether good cause for the delay has been advanced. I will start with the first reason for the delay, the ill health of the applicant

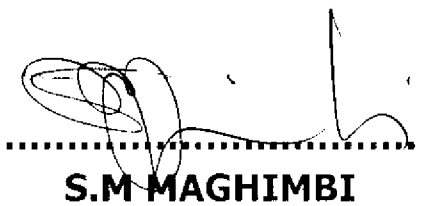
herein. In an attempt to convince the court on her sickness, the applicant provided annexure 3 which is hospital attendance register. In his submissions to support the application, Mr. Joachim submitted that the applicant was admitted in hospital, a fact which is not averred in the affidavit nor has any supporting documents thereto. The annexure 3 is a copy of hospital attendance register which shows that the applicant was attending a dispensary for treatment. There is no place which shows that the applicant was bedridden or could not walk. Therefore much as the applicant was attending a hospital, the documents produced do not suffice to conclude that the applicant was so sick to be unable to pursue her right by even instructing an advocate to pursue her appeal. Hence for me, the reason of sickness is not sufficient to convince the court to extend time for the applicant.

There is also the Misc. Land Application No. 370/2017 which the applicant filed and the same was struck out on 02/05/2018, I have noted that the applicant has failed to reveal as to when the said application was filed in order to determine the lapse of time. Furthermore, in his submissions, Mr. Joachim advanced reasons which were not backed up by any document, the reason that the applicant was admitted in hospital while the Annexure 3 just show that the applicant was attending a dispensary and no records that she was ever admitted. There is also a delay of one month, between the time when the Misc. Land Application No. 370/2017 was struck out and when this application was filed, which has not been accounted for.

In conclusion, the applicant has failed to adduce sufficient reasons for the delay to warrant this court to use its discretionary powers to extend time. Given the fact that it is more than two years since the

judgment was delivered, in the absence of sufficient cause, it will be unfair for the court to delay the respondent who is the decree holder to enjoy the fruits of her decree. This application is therefore dismissed with costs.

Dated at Dar es Salaam this 19th day of September, 2019.



S.M MAGHIMBI
JUDGE.