

**IN THE HIGH COURT OF THE
UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO. 506 OF 2019

ANNA MASUNGWA.....APPLICANT

VERSUS

VERONIKA FABIAN LANGISI

(Administrator of the Estate of FABIAN SINANDUGU).....**1ST RESPONDENT**

DEKI ANDIMILE.....2ND RESPONDENT

Date of Last Order: 12.02.2020
Date of Ruling: 26.05.2020

RULING

V.L. MAKANI, J.

This is an application by ANNA MASUNGWA. She is applying for extension of time to file an appeal against the judgment of Kilosa District Land and Housing Tribunal in Land Appeal No. 28 of 2016. The appeal originated from Lililopo Ruhembe-Kidogobasi Ward in Shauri la Madai Na. 11 of 2015.

The application is made under section 38(1) of the Land Disputes Courts Act CAP 216 RE 2002 and section 21(2) of the Law of Limitation Act CAP 89 RE 2018 and is supported by the affidavit of the applicant herself. The 1st respondent filed a counter affidavit to oppose the said application. The 2nd respondent did not file a counter affidavit.

With leave of the court the application was argued by way of written submissions. The submissions on behalf of the applicant were drawn and filed gratis by Irene Felix Nambuo, Advocate from the Legal Aid Clinic of Legal and Human Rights Centre. The 1st respondent drew and filed her own submissions, but the 2nd respondent did not file any submissions as per the court order. The court thus takes cognizance that the 2nd respondent has waived his right to be heard.

In her submissions, Ms. Nambuo for the applicant submitted that being aggrieved with the decision of the District Tribunal, the applicant filed in this court Misc. Land Appeal No. 110 of 2018. But at the stage of delivery of its judgment the court on its own motion struck out the appeal for being incompetent. She said the court has the discretion to extend time for filing appeal and according to the applicant's affidavit the delay in filing the appeal was not in any way connected to negligence but she was pursuing another case before the court in good faith as stated in section 21(2) of the Limitation Act. She said though it is the discretion of the court to grant extension of time, but the said discretion has to be exercised judiciously. She relied on the cases of **Benedict Mumelo vs. Bank of Tanzania, Civil Appeal No. 12 of 2002 (CAT-DSM)** (unreported) and **Yusuf Seme & Another vs. Hadija Yusufu, Civil Appeal No. 1 of 2002** (unreported). Ms. Nambuo prayed for the application to be granted as the appeal has overwhelming chances of success and there was no negligence on the part of the applicant.

In response, the 1st respondent submitted that for an application of extension of time to be granted there has to be a good cause and the factors to be considered were explained in the case of **Lyamuya Construction Company Limited vs. Board of Registered Trustes of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010** (unreported). She said the applicant was not pursuing the appeal diligently because it was struck out for being incompetent. She said that does not amount to diligence but a high degree of negligence. She further said the appeal was struck out on 16/08/2019 and the copy of the ruling and decree were obtained on the same day, but this application was filed on 03/09/2019 and so she was wondering what the applicant was doing in almost 19 days. She said what is stated as reasons for delay in the affidavit of the applicant is negligence. She said it is trite law that when an appeal is struck out what the applicant ought to do was to file another appeal and not the application for extension of time as it was abuse of the courts process. She relied on the case of **Cyprian Mamboleo Hizza vs. Eva Kioso & Mrs. Semwaiko, Civil Application No. 03 of 2010 (CAT-Tanga)** (unreported). In conclusion the applicant prayed for the application to be dismissed with costs as no sufficient reasons have been adduced to warrant the court's discretion to grant extension of time.

In rejoinder, Ms. Nambuo reiterated the contents of the submissions in chief and emphasized that the delay in filing the appeal was in no way the negligence of the applicant as she has been in court pursuing her appeal but it was struck out by the court on its own motion for

being incompetent. She further stated that the court should invoke its inherent powers to make sure justice is attained without following technicalities which may lead to an unjust decision. She prayed for the application to be granted.

I have gone through the rival submissions by the parties. It is a settled principle of law that in determining an application for extension of time the court examines if the applicant has adduced sufficient reasons for the court to grant the application sought. The court has to exercise its discretion in granting such an application (see **Mumello vs. Bank of Tanzania** (supra)).

The main reason for the delay as advanced by the applicant was that she filed an appeal but it was struck out for being incompetent and so she could not have filed another appeal before seeking for extension of time to do so and this is the subject of this application.

I have noted from the submissions by the respondent that she does not deny that the previous appeal by the applicant was struck out by the court for being incompetent; but her argument is that the applicant cannot benefit from her own negligence in filing an incompetent appeal. And secondly, the applicant ought to have filed another appeal and not this application for extension of time.

However, going through the affidavit by the applicant and as emphasized in her submissions, it is quite apparent as I have stated hereinabove that, the applicant had filed an appeal, but the said

appeal was struck out on the courts own motion on 16/08/2019 for being incompetent, in that, the reference of the parties to the appeal was not proper. The applicant filed this application in order to seek extension of time so that she can file another appeal which is proper. The applicant is wondering where the applicant was from when the appeal was struck out in 16/08/2019 to when this application was file on 06/09/2019. In my view, considering that the applicant is a layperson this delay is reasonable, as she had to seek professional services of a lawyer so that she could not make another mistake; and she fortunately landed and got services from the Legal Aid Clinic of the Human Rights Centre. This therefore accounts for the delay of up until 06/09/2019 when this application was filed after the appeal being struck out by the court.

The 1st respondent claims that the applicant should not have filed this application, that she should have directly filed an appeal. But with due respect, since the applicant was already out of time, she could not have filed an appeal without the court first granting her leave to do so out of time.

Though the respondent has argued that the applicant was negligent, but needless to say, she was prosecuting an appeal against the respondent which time has to be excluded. For ends of justice, I am satisfied that the applicant has given good reasons to enable this court to exercise its discretion to extend the time within which to file an appeal.

In the premise, leave is hereby granted to the applicant to file her appeal out of time as prayed. The said appeal to be filed within **thirty (30) days** from the date of this ruling. There shall be no order as to costs.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
26/05/2020