

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 10 OF 2020

(Originating from Application No. 8 of 2017 in the District Land and Housing Tribunal for
Katavi at Mpanda)

MARTIN WAMBULA APPLICANT

VERSUS

HASSAN SALUM KORONGO

(Administrator of the estate of the late

SALUM KORONGO MONGOMONGO)RESPONDENT

Date of Last Order : 09/06/2021

Date of Ruling : 30/08/2021

RULING

C.P. MKEHA, J;

The applicant, Martin Wambula, is seeking to move this court under section 41 (2) of the Land Dispute Courts Act, Cap 216 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendment) (No. 2) Act, 2016 (*the Act*) for the following reliefs, namely: -

- a) That, this Court be pleased to extend time to lodge an appeal.*
- b) The respondent be condemned to pay costs of this application.*
- c) Any other relief as the court may deem fit to grant.*

The application was supported by an affidavit sworn by the applicant. The respondent resisted the application by filing a counter affidavit.

When this contentious application came for hearing, parties appeared in their personal capacities though through virtual court. This matter, by the order of this court dated 22nd February, 2021, was argued by way of written submissions. Both parties have duly filed their respective submissions. Whereas the applicant prepared and filed his own written submission, the respondent, on the other hand, engaged the services of Mr. Sweetbert Alphonse Nkumpilo, learned counsel for the purpose of writing the submission.

In his submission in support of the application, the applicant, who adopted the affidavit in support of the application as part of his submission, had these to submit. The applicant's delay to file an appeal was due to technical factors as well as financial constraints. In his submission he told the court that, he had to wait for the amended judgment from the trial tribunal after his appeal was withdrawn from this Court for want of such a proper judgment. The time was waited during that waiting period, he submitted. He also submitted that, the said amended judgment was delivered without notice. Besides that, he also contended that, due to financial constraints some days passed which also contributed to his delay. He was able to raise funds from other judgment debtors who expected to benefit from his course.

In his further submission, he urged this Court to take note of the existence of illegality and irregularity on the face of record in the impugned judgment. His main contention on this concern is on the failure by the respondent to properly describe the suit premise as required by the law. He continued to challenge the impugned judgment basing on factual analysis that he had tried to contemplate. He urged this Court to see the illegality basing on the facts that the suit premise was sold to him, a bona fide purchaser, by the respondent. He further told the Court that, in case the application would be denied he would suffer an irreparable loss.

He was surprised by the respondent's rebuttal towards the present application if at all the respondent took note of paragraph 3 of the affidavit in support of the application. As a result, he was of the contended argument that the respondent should be estopped from opposing the application. He was of the argument that, the applicant is supposed to account for the whole time of delay not necessarily day by day. He had cited the following case laws that illustrates various legal tenets. **Bruno Wenceslaus Nyalifa v. The Permanent Secretary, Ministry of Home Affairs and Another**, Civil Appeal No. 82 of 2017, Court of Appeal of Tanzania at Arusha (unreported), **Charles S. Kimambo v. Clement Leonard Kusudya and Another**, Court of Appeal of Tanzania at Dodoma (unreported), **Tropical Air (Tz) Limited v. Godson Eliona Moshi**, Civil Application No. 9 of 2017 Court of Appeal of Tanzania at Arusha (unreported), **Tanzania Rent car A Car Limited v. Peter Kimuhu**, Civil Application No. 226/01 of 2017 Court of Appeal of Tanzania at Dar es

Salaam (unreported), **Sylvester Bujibu v. Charles Maemba**, Land Appeal No. 145 of 2019 (unreported), **Daniel Dagala Kanuda v. Masaka Ibeho & 4 Others**, Land Appeal No. 26 of 2015, High Court of Tanzania at Tabora (unreported) and **Fortunatus Masha v. William Shija and Another** [1997] TLR 154.

In rebuttal, Mr. Nkumpilo was dissatisfied with the reasons advanced by the applicant. He valiantly contended that, there is no evidence to support the applicant's reasons. As for the issue of financial constraints, it is not a good cause to warrant a grant of the present application. As for the technical delay, he challenged the applicant's concern basing on the fact that the said appeal was not struck out for being incompetent as it is required by the law. He also told the Court that, the applicant had no right over the suit premise since he bought the said premise from a person who had no capacity to sale the same. He also told the Court that, the present application cannot, in the absence of representative order, be made on behalf of others as contended by the applicant. He finally contended that, the applicant has failed to account for each day of delay as required by the law. He urged this court to dismiss the application with costs for want of merits. He cited the following case laws to buttress the arguments; **Oswald Masatu Mwizarubi v. Tanzania Fish Processors Ltd**, Civil Application No. 13 of 2010 (unreported), **Atumani Amiri v. Hamza Amiri and Adia Amiri**, Civil Application No. 133/02/2018, Court of Appeal of Tanzania at Arusha (unreported), **Wambele Mtumwa Shahame v. Mohamed Hamis**, Civil

Reference No. 8 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported), **Charles S. Kimambo v. Clement Leonard Kusudya and Another**, Court of Appeal of Tanzania at Dodoma (unreported), **Yara Tanzania Limited v. DB Shaprya and Co. Limited**, Civil Application No. 498 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported), **Bharya Engineering and Contracting Co. Ltd v. Hamoud Ahmad @ Nassor**, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania at Tabora (unreported) and **Zahoro Salum Zahoro v. Salma Issa Mtambo (The Administratrix of the Estate of the late Katembe Simba) & 4 Others**, Land Case No. 416 of 2016, High Court of Tanzania at Dar es Salaam (unreported).

I have weighed both the written submission and the affidavital evidence of both sides. I am of the firm view that, the issue for determination is whether the applicant has advanced good cause to warrant the exercise of this Court's discretionary powers in this matter. The most crucial aspect to be considered is whether there is a good reason/cause that hindered the applicant to file the appeal in time. This is because, parties are duty bound to move the court timely. In the case of **Loswaki Village Council and Another v. Shibesh Abebe** [2000] TLR 204, the Court stated that;

"Those who seek the aid of the law by instituting proceedings in a court of justice must file such proceedings within the period prescribed by law, or where no such period is prescribed, within a reasonable time."

In the case of **Mbogo v. Shah** [1968] EA 93, which was cited with approval in the case of **Ngao Godwin Losero v. Julius Mwarabu**, Civil Application No. 10 Of 2015, Court of Appeal of Tanzania at Arusha (unreported), it was held as follows: -

“All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended.”

Usually, in deciding the merits or otherwise of this application the court as always is guided by the Act, more specifically the enabling provision which gives the requisite jurisdiction to this Court. A close scrutiny of the above enabling provision of the law it states 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...*” The catchwords in that provision of the law are; “*the High Court may, ...*” In ordinary legislative language the word may connote discretion. The principles for the exercise of discretionary powers of the Court are now well established. Such powers must be used justly. The powers must be exercised according to the rules of reason and justice, not according to private opinion. In other words, the court’s discretion has to be exercised judiciously. As rightly submitted by Mr. Nkumpilo, the applicant has the burden of adducing sufficient or good cause and to account for each day of delay. I take note of the position of the law that there are no hard and fast rules on what amounts to sufficient or good cause. See for instance

the case of **Berry v. British Transport Commission** [1962] 1 QB 306, **Abdul-Rahman Salemeen Islam v. Africarriers Limited**, Misc. Commercial Application No. 203 of 2018, High Court of Tanzania (Commercial Division) at Dar es Salaam (Unreported), **Republic v. Yona Kaponda and 9 Others** (1985) TLR 84, **Wambele Mtumwa Shahame v. Mohamed Hamis** (supra) and **The Principal Secretary, Ministry of Defence and National Service v. Duram P. Valambhia** (1992) TLR 387.

In the case of **Aidan Chale v. Republic**, (2005) TLR 76 the Court of Appeal had an opportunity to judicially consider what amounts to good cause when it adopted with approval the reasoning in the case of **R v. Governor of Winchester Prison, ex parte Roddie** [1991] 2 All ER 931, at page 934 Lloyd, L. J said;

“...good cause will usually consist of some good reason why that which is sought should be granted. It does not have to be something exceptional. To amount to good cause there must be some good reason for what is sought. It was considered that it was undesirable to define good cause and that it should be left to the good sense of the tribunal which has to decide whether or not good cause has been disclosed.”

In the case of **Ramadhani J. Kihwani v. TAZARA**, Civil Application No. 401/18 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported), the Court of Appeal had these to say;

“...The filing of an incompetent appeal having been duly penalized by striking it out, the same cannot be used yet again to determine the timeousness of applying for filing the fresh appeal... the applicant has not explained away the

period of delay falling between 07.05.2018 when his appeal was struck out by the Court and 04.09.2018 when the present application was lodged. That is about 110 days unaccounted for... no explanation is deposed in the affidavit why it took about four months (110 days) to lodge the instant application."

The present application is based on a mainly three grounds that; the delay was due to the court's processes when the impugned judgment was sought to be rectified. It is simply a ground based on technical delay. The second one is on financial constraints and the last one is that of illegality.

In the case of **Fortunatus Masha v. William Shija and Another** [1997] TLR 154 which was also cited with approval in the case of **Bank M (Tanzania) Limited v. Enock Mwakyusa** (supra) the Court of Appeal of Tanzania discussed "technical delays" in the words to the following effects: -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these circumstances an extension of time ought to be granted. "

The said technical delay in the present case is that which is associated with the tribunal's chairperson who delayed to supply the

applicant with the rectified judgment. It was a further contention from the applicant that the said impugned judgment was issued without notice. However, the said impugned judgment was ready for collection since 06th May, 2020. The applicant had filed the present application on 16th July, 2020 which was after expiration of seventy (70) days. If the argument is that, the said impugned judgment was issued without prior notice to the applicant or that the tribunal's chairperson delayed to rectify the anomalies as averred in paragraph 4 of the affidavit in support of the application the applicant ought to provide more convincing evidence to that effect. The applicant ought to prove that he acted diligently in pursuing his matter before the trial tribunal by producing a letter that requested for the said rectified judgment and the replies from the said trial tribunal. As rightly submitted by Mr. Nkumpilo a reason that the applicant had financial constraints to ignite the proceeding is not a good cause (see, **Wambele Mtumwa Shahame v. Mohamed Hamis** (supra). Besides, it is unclear, whether the said constraint was in respect of drafting costs or filing costs. Either way, there is in place various legal aid schemes. He could have approached the private schemes or even applied to the Court for waiver of costs or legal aid had he acted diligent in pursuing his course.

As for the issue of illegality, the same should be apparent on the face of record not that, which needs a long-drawn argument (see the case of **Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, Court of Appeal of Tanzania (unreported).

In the present matter the issue that the respondent had failed to describe the suit premise or that there is an issue of a bona fide purchaser are all covered in evidence and already dealt with by the trial tribunal. This can be vividly seen in the impugned judgment. In other words, those are factual issues that the applicant ought to have raised during trial. Thus, in order to establish their existences, one must review the whole evidence. That goes contrary to a trite principle that was expounded in the case of **Lyamuya Construction Co. Ltd v. Board of Trustees of Young Women's Christian Association of Tanzania** (supra).

On 27th August, 2019 the said Land Appeal No. 17 of 2019 was withdrawn from this Court at the instance of the learned counsel for the appellants. In that case, the applicant was one of the appellants. The said rectified judgment was ready since 04th April, 2020 and it was ready for collection on 06th May, 2020. The present application was filed in this Court on 16th July, 2020 although it is confusing on how it was admitted by the Deputy Registrar on 20th July, 2020 and presented for filing on 16th July, 2020. Be it as it may, by 16th July, 2020 the applicant was late for almost 70 days from when the said impugned judgment was ready for collection. The applicant's concern that it was issued without notice is an afterthought and an attempt to shift a burden to the trial tribunal without proving how diligent he acted in making his follow-ups as he has alleged. It is my sincere finding that, the applicant had failed to account for each day of delay from when the rectified judgment was ready for

collection. Failure to account for those 70 days that had expired from when the impugned judgment was ready for collection cripples the entire application.

In the case of **Sebastian Ndaula v. Grace Rwamafa**, Civil Application No. 4 of 2014, Court of Appeal of Tanzania at Bukoba (unreported), the Court of Appeal cited with approval the decision in the case of **Royal Insurance Tanzania v. Kiwengwa Strand Hotel Limited**, Civil Application No. 116 of 2008 (unreported) which stated that: -

“It is trite law that an applicant before the Court must satisfy the Court that since becoming aware of the fact that he is out of time, act very expeditiously and that the application has been brought in good faith.”

It should be noted here that, a delay, of even a single day, has to be accounted for, otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken. See for instance the following cases; **Bruno Wenceslaus Nyalifa v. the Permanent Secretary, Ministry of Home Affairs and Another**, Civil Appeal No. 82 of 2017, Court of Appeal of Tanzania at Arusha (unreported) and **Sebastian Ndaula v. Grace Rwamafa**, (supra).

In the event and for the reasons stated herein above, the totality of the applicant's conduct and the baseless nature of the reasons advanced to warrant this court grant the application precisely leaves this court with no any other option but to decline the application. Consequently, the application is hereby dismissed with costs.

It is so ordered.

Dated at Sumbawanga this 30th day of August, 2021.



A handwritten signature in blue ink, appearing to read "C.P. Mkeha".

C.P. Mkeha

JUDGE

30/08/2021

ORIGINAL

Date - 30/8/2021
Coram - Hon. W.M. Mutaki – DR
Applicant - Present
Respondent - Present
B/C - Namtamwa

Order: Notice for Ruling to be issued on 30/08/2021.

1. Order for Ruling date 2/9/2021 hereby varied to 30/08/2021
2. Parties to appear at Katavi RM'S through video conference.




W.M. MUTAKI

DEPUTY REGISTRAR

30/08/2021

Court: Ruling delivered in the presence of parties through video conference. Both parties appear at Katavi RM'S Court.
Further right of appeal explained to the aggrieved party.




W.M. MUTAKI

DEPUTY REGISTRAR

30/08/2021