IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 724 OF 2019

(Arising from the Decision of the District Land and Housing Tribunal for Kinondoni District in Land Application No. 59 of 2010)

MPOKI ISRAEL MWARABWA ..... APPLICANT

VERSUS

1. CATHERINE MWASULAMA
2. ASHA BAKE **..... RESPONDENTS**

RULING

Date of Last Order: 14/06/2021 &
Date of Ruling: 099/07/2021

S.M KALUNDE, J:-

The Applicant had filed **Land Application No. 59 of 2010** before the District Land and Housing Tribunal for Kinondoni District at Mwananyamala (**"the tribunal"**). On 18th September, 2017 the tribunal delivered its decision in favour of the respondents. A week later, on 25th September, 2017 he applied to be supplied with copies of judgment and decree. The applicant is aggrieved by that decision and intends to appeal to this Court. Unfortunately, he is out of time and hence he filed the present application for extension of time within which to file an appeal out of time against the decision of the tribunal. The application is preferred under **section 41 (2)** of **the Land Disputes Courts**

Act, Cap. 216 R.E. 2019, and is being supported by an affidavit sworn by **Mpoki Israel Mwarabwa**, the applicant.

In response the learned counsel for the respondents, **Mr. Juventus Katikiro**, filed a counter affidavit strongly opposing to the prayers sought by the applicant.

On 21st April, 2021, the counsel for the respondents requested the application be argued by way of written submissions. The prayer was granted and a schedule for filing submissions was issued. Submissions in chief and reply submissions were filed on time. However, at the expiry of the timelines issued, the applicant did not file their rejoinder submissions. Submissions of the applicant were drawn and filed **Mr. Daibu Kambo**, learned advocate and those of the respondent were drawn and filed by **Mr. Juventus Katikiro**.

Submitting in elaborating the background of the application, Mr. Daibu was brief and to the point. He contended that, the impugned decision was delivered on 18th September, 2021. He was aggrieved by that decision and intended to appeal, consequently, on 25th September, 2021 he applied to be supplied with copies of judgment and decree. He argued that the relevant copies were not supplied to him until on 30th January, 2018. Upon being supplied with the copies of judgment and decree he noticed some typographical errors in the said judgment and decree.

Mr. Daibu contended that, upon noticing the typographical errors in the judgment and decree, on 02nd February, 2018 he wrote to the Chairman of the tribunal requesting for the correction of the errors. He was informed to file a formal

application. Successively, on 27th February, 2018 a formal application was filed and registered as Misc. Application No. 117 of 2018. Upon hearing the parties, on 12th November, 2019, the tribunal delivered its ruling and granted the orders for correction of the errors in the judgment and decree. Corrected copies of the judgment and decree were certified as ready for collection on 05th December, 2021. The present application was subsequently, filed on the 23rd December, 2019.

In conclusion, Mr. Daibu argued that the failure to file the appeal withing a statutory time was not the applicant's fault or inaction but for some grounds beyond his control as the tribunal delayed in supplying him with the corrected copies of the judgment and decree. He thus prayed the application be granted.

Mr. Katikiro, learned advocate, thought otherwise. According to him the delays in filing the appeal was a deliberate move by the applicant in delaying the respondents right in enjoying their rights over the disputed land having won the main application. Citing **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, CAT (unreported), the counsel argued that the applicant had failed to account for everyday of the delay.

To drive his point home, Mr. Katikiro argued that the decision sought to be challenged was indeed delivered on 18th September, 2021. However, he submitted the copies of judgment and decree were certified as ready for collection on 16th October, 2017, twenty eight (28) days after the delivery of the decision. He

reasoned that, an argument that the applicant was notified by a clerk called Kunguru on 30th January, 2018 was unfounded as the applicant did not attach an affidavit of the said Kunguru to support the allegation. He added that the counsel for the applicant was negligent in collecting the copies of judgment and decree as the same were ready for collection on 16th October, 2017. He concluded that, delay in filing the appeal was the applicants own making and prayed the application be dismissed with costs.

The question for my determination is now whether the present application is merited. In my determination I am being guided by the provisions of section 41 of Cap. 216. The section reads:

> *"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."* [Emphasis mine]

The principle that has been extracted from the above section is that extension of time is a discretion of the Court exercisable upon satisfaction that there is **good cause for doing so**. To guide that discretion courts have developed principles to be applied by courts when considering whether an application for

extension of time may be granted or not. The principles were listed by **Massati J.A.** in **Lyamuya Construction Company Ltd.** (supra), they include:

> 1 The applicant must account for all the period of delay.
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> 2 The delay should not be inordinate.
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> 3 The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.
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> 4 If the Court feels that there are other reasons. such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

On the basis of the above principles and facts before this Court, the question now is whether the applicant has presented materials sufficient to explain away the delay in the present case.

It is on record that the decision sought to be challenged was issued on 18th September, 2017. The applicant allegedly, logged a letter requesting to supplied with the copies of the judgment and decree on 25th September, 2017. His affidavit appended a letter to the tribunal. He claimed that after several follow-ups he was notified by a clerk that they were ready for collection on 30th January, 2018.

Upon perusal of the records, I noted several issues with the exposition of events. **Firstly**, there is no indication or proof whether letter which was allegedly logged on 25th September, 2017, was in fact logged and received by the tribunal. I say so because there is no stamp on the letter indicating when the said

letter was received by the tribunal. The said letter contains a signature and a date, however that is not the acceptable practice adopted by courts. The normal procedure requires the document to be stamped as received by the tribunal and the date of receipt is affixed. As such it leaves questions on the validity of the said letter as well as the veracity of the applicants' argument.

Secondly, even assuming the letter was in deed, logged and received by the tribunal on the respective date, it is apparent on the face of record that, the judgment and decree were certified as available for collection on the 16th October, 2017. The applicant allegedly collected the same on 30th January, 2018. That is a delay of almost 100 days or three months unaccounted for. The applicant only account is that he kept making follow-up of the copies until he was notified by the tribunal clerk that they were ready for collection on 30th January, 2018. After filing the letter on 25th September, 2017 there was no any subsequent follow-up or reminder letter to ask on the status of the copies of the decision. On this, I agree with the counsel for the respondent that, if indeed the applicant was notified of the readiness of the copies of judgment and decree by a tribunal clerk on 30th January, 2017, then the affidavit of the said clerk would have been relevant to attest to that. Without the affidavit of the clerk or any other sufficient explanation the 100 days continue to be an accounted.

In a bid to justify his delay, the applicant claimed that, upon receipt of the judgment and decree he noticed

I cannot affirmatively agree with the respondents that the application for change of names was a delaying tactic, but I am

certainly sure it was not the reason why the applicant delayed in filing his appeal. I say so because even after obtaining the corrected judgment and decree on 05th December, 2019, the applicant took eighteen (18) more days to file the present application. There is, however, no explanation why he did not act promptly in bringing the present application.

It did not stop there, apparently, when he finally filed the present application, the chamber summons and affidavit were bearing the same names as those contained in the original judgment and decree. Logic would dictate that, if really the applicant was delayed in filing the appeal because of the errors in names in the original judgment and decree, the application would contain the appropriate names since by now the applicant had a corrected judgment and decree. But that was not the case. Either way, this argument has not served well in explaining away the delay.

It is trite that for an application of extension of time to succeed, the applicant must account for even a single day. There is a chain of authorities to that effect. The list is not limited to: **Bushiri Hassan vs. Latifa Mashayo**, Civil Application No. 2 of 2007; **Bariki Israel vs. The Republic**, Criminal Application No.4 of 2011; **Crispian Juma Mkude vs Republic**, Criminal Application No.34 of 2012; **Sebastian Ndaula vs. Grace Rwamafa (Legal Representative of Joshwa Rwamafa)**, Civil Application No. 4 of 2014; and **Mustafa Mohamed Raze vs. Mehboob Hassanali Versi**, Civil Application No. 168 of 2014 (unreported); and most recently in **Ludger Bernad Nyoni vs**

National Housing Corporation (Civil Appl No.372/01 of 2018) [2019] TZCA 154; (06 May 2019 TANZLII).

In **Ludger Bernad Nyoni** (supra) the Court of Appeal observed that:

> *"Perhaps, I should add that beyond our borders, the Supreme Court of South Africa stated, in a similar vein, in **Uitenhage Transitional Local Council v. South African Revenue Service**, 2004 (1) SA 292 that:*
>
> > *"Condonation is not to be had merely for the asking; **a full detailed and accurate account of the causes of the delay and its effects must be furnished** so as to enable the Court to understand clearly the reasons and to assess the responsibility." [Emphasis added]"*

Mindful of the above position of the law, I am satisfied that the applicant has failed to provide a full, detailed, and accurate account of the causes of the delay sufficient for this Court to condone the delay. It is for the above reasons that I dismiss this application with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this **09th** day of **July, 2021**.

S.M. KALUNDE

JUDGE