

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

MISC. LAND APPLICATION NO. 496 OF 2018

OBASI NDELWAAPPLICANT

VERSUS

JOHN LUKWARORESPONDENT

R U L I N G

Date of Last Order: 23/03/2021

Date of Ruling: 08/06/2021

MANGO, J.

The Applicant Seeks extension of time to Appeal against the decision of District Land and Housing Tribunal for Kinondoni in Bill of Costs Application No. 09 of 2017. The Application is by way of Chamber Summons made under Section 41(2) of the Land Disputes Courts Act [Cap 216 R. E. 2019] supported by an Affidavit sworn by Obasi Ndelwa. The Application is contested by the Respondent who filed a counter Affidavit to that effect.

The Applicant was represented by Mr. Meswin Joseph Masinga, learned counsel while the Respondent was represented by Mr. Charles Leonard Yotamu, Learned Counsel. On 9th February, 2021, this Court ordered the Application to be argued by way of Written Submission.

According to the Affidavit sworn in support of this Application and the submission, the reason that the caused the Applicant's delay to file his Appeal within the prescribed time limit, was failure to obtain the copy of the ruling on time.

According to paragraph nine of the Affidavit, the Applicant was availed with the copy of the ruling subject of the intended Appeal on 02nd May, 2018.

In his reply submission, the Respondent's counsel argued that the Applicant has failed the Account for the delay with a good cause. Citing the case of **Lyamuya construction Company Vs. Board of Registered Trustee of Young Women's Christian Association**, Civil Application No. 2 of 2010 in the Court of Appeal of Tanzania at Arusha, the Respondent's counsel argued that, the Applicant ought to have accounted for each day of delay with a good cause. He submitted further that, the Applicant failed to account for his delay from when he received copy of Ruling to the date of filing this Application. That is 2nd May 2018 to 7th August, 2018.

I have considered submission by both parties and court record. The Law, section 42(1) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] requires an Applicant for extension of time to advance a good cause that has contributed to his delay. Section 41(2) reads: -

"An Appeal under subsection (1), may be lodged within 45 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 expiry of such period of 45 days."*

The reason for delay that has been advanced by the Applicant, delay in obtaining copy of the ruling is among the reasons that has been considered to amount to a good cause for extension of time. However, as noted correctly by the counsel for the Respondent, with such reason the Applicant managed to account for the period from when the ruling was delivered to when he received the copy of the said ruling, that is from 23rd March 2018 to 22nd June 2018. It is not disputed that the Applicant received a copy of the ruling of the District Land and Housing Tribunal for Kinondoni in Misc. Application No. 2017 on 2nd May, 2018. The Application before me was filed on 07th August, 2018. Counting from 2nd May, 2018, 96 days lapsed from when the Applicant received the copy of ruling until when he filed this Application.

With exclusion of 45 days which is the time limit for Appeals from District Land and Housing Tribunal to the High Court as per section 41(2) of the Land Disputes Courts Act, the Applicant did not account for 51 days. It is well established that in accounting for the period of delay, the Applicant need to account for the entire period of delay. In the case of **Tanzania Fish Processors Ltd Versus Eusto K. Ntagalinda** Civil Application No. 41/08 of 2018 Court of Appeal of Tanzania at Mwanza, considered the applicant to have failed to account for the delay of 14 days. Citing the case of **Hassan Bushiri versus Latifa Lukio Mashayo**, Civil Application No.3 of 2007 the Court of Appeal held that, *the law is clear that in an application for extension of time, the applicant should account for each day of the delay*. The Applicant in this Application failed to account for his delay for 51 days. In such circumstances, I find the applicant to have failed to account for his entire delay with a good cause.

For that reason, this Application is hereby dismissed. Given circumstances of this Application, especially the need to have finality of litigations, this Court does not award any costs. Each party should bear his own costs.




Z. D. MANGO
JUDGE
28/05/2021