

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

**MISC. LAND APPLICATION No. 70 OF 2021**

(Arising from Temeke District Land Tribunal in Land Application No. 304 of 2018 (Hon. Mnzava, Chairman))

**MASUMBUKO RASHID LYESEO.....APPLICANT**

**VERSUS**

**MGOMI KESSY KONGWA.....1<sup>ST</sup> RESPONDENT**

**JUMANNE SULTAN KIHAMBWE.....2<sup>ND</sup> RESPONDENT**

**KAM COMMERCIAL SERVICES.....3<sup>RD</sup> RESPONDENT**

**MOHAMED KAISI.....4<sup>TH</sup> RESPONDENT**

Date of last Order: 15.09.2021

Date of Ruling: 11.10.2021

**RULING**

**V.L. MAKANI, J**

The applicant MASUMBUKO RASHID LYESEO is applying for extension of time withing which to file an appeal against the dismissal order of Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 304 of 2018. The application is made under Section 41(2) of the Land Disputes Courts Act, CAP 216 RE 2019 and is supported by the affidavit of the applicant himself.

In his affidavit the applicant claims that he filed Land Application No. 304 of 2018 in the Tribunal claiming ownership of the land located at Kigamboni area (the **suit property**). He said he was negligent but was led to believe by his Advocate Mr. Mkali that all was well. In the first instance his advocate did not appear but he was personally present, but the Tribunal demanded that he proceed on his own. When he refused the matter was dismissed with costs under Regulation 13(2) and (3) of the Land Disputes Courts (the Land and Housing Tribunal) Regulation (GN No. 174 of 2003) (the **Regulations**). He said after the decision he informed his advocate who accepted to take further action but instead he filed an application for extension of time to file and application for revision which was dismissed on preliminary objection. He said he was delayed to file an appeal because he trusted his advocate who filed the application for extension of time for revision and so more days were spent in an application which was struck out. The applicant alleges in the affidavit that without this court extending time to file an appeal then he would be condemned unheard and him to suffer irreparable loss because the 1<sup>st</sup> respondent intends to execute the decree in respect of the case of Ward Tribunal which he was not party thereof.

With leave of the court the application was argued by way of written submissions which the parties adhered to save for the 3<sup>rd</sup> respondent who did not enter appearance and hence the application proceeded ex-parte against her.

The submissions in support of the applicant were filed by Mr. Yuaja Balankiliza, Advocate. He said that the affidavit discloses that there was no negligence but reasons beyond the control of the applicant. He said the applicant entrusted his advocate and he believed that an application for extension of time to file revision was the proper remedy in respect of the dismissal of his application by the Tribunal. And while he was struggling with the application the applicant became delayed in filing an appeal hence this application for extension of time. He relied on the case of **Judith Emmanuel Lusohoka vs. Pastory Binyura Mlekule & 2 Others, Misc. Land Case Application No. 74 of 2018 (HC-Tabora)** (unreported) where the court held that being let down by negligence or incompetence of lawyers by filing documents contrary to the requirement of law constitutes good cause for extension of time.

Mr. Balankiliza further pointed out there is illegality in the manner that the Tribunal dismissed the application because according to Regulation 13(2) of the Regulations absence of an advocate for two consecutive dates without good cause may require the party to proceed himself and if refuses then the application may be dismissed. He said in this case the absence of the advocate was only once on 31/10/2019 and there was a reason for that as such there was illegality in the decision of the Tribunal. He relied on the case of **Principal Secretary, Ministry of Defence and National Service vs. Devram Valambhia [1992] TLR 182**. He went on saying that the rules of procedure are handmaids of justice and they should facilitate rather than impede substantive justice. He relied on **Copper vs. Smith (1884) 26 CLD 700**.

Mr. Nickson Ludovick, Advocate filed submissions on behalf of the 1<sup>st</sup> respondent. He submitted that the applicant's reasons for delay where that his advocate was negligent, but he said ignorance of law does not constitute good cause for extension of time. He relied on on the case of **Mussa S. Msangi & Another vs. Anna Peter Mkomea, Civil Application No. 188/17 of 2019 (CAT-DSM (unreported), Exim Bank (Tanzania) Limited vs. Jacquilene A.**

**Kweka, Civil Application No. 348 of 2020 (CAT-DSM)**  
(unreported) and **Omari R. Ibrahim vs. Ndege Commercial  
Servies Limited, Application N. 83/01 of 2020 (CAT-DSM)**  
(unreported).

He said the applicant was not forced to proceed without his advocate, but the Tribunal exercised its powers judiciously. He said according to Rule 13(2) and (3) of the Regulations, where an advocate is not present then the party must proceed or else produce summons or cause list of the superior court that the advocate is in the said superior courts. He said the party did not produce the documents as such the Chairman had to proceed accordingly. He said if illegality is raised then it must be established that the illegality is apparently on the face of record. Mr. Ludovick submitted that there are no proceedings that shows that the learned Advocate was only absent once. He thus said no illegality has been established and cited the case of **Lyamuya Construction Company Limited vs. Board of Rgistred Trusttes of Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010 (CAT-Arusha)** (unreported) and **Mega Builders Limited** (supra). Learned Counsel lastly pointed out that the applicant has failed to account for each day of delay to warrant

extension as is stated in the cases of **Yazid Kassim Mbakileki vs. CRDB (1996) Limited Bukoba Branch & Another, Civil Application No. 412/04 of 2018 (CAT-Bukoba), Lyamuya Construction Limited** (supra) and **Mega Builders Limited** (supra). He concluded by stating that the application is devoid of merit and prayed for its dismissal.

The 2<sup>nd</sup> and 4<sup>th</sup> respondents filed their submissions personally. Their submissions were brief and in essence they supported the arguments by the applicant. The said the application has merit and the applicant deserves to be heard for interest of justice.

In rejoinder Mr. Balankiliza reiterated what was in his main submissions but pointed out to the court that he could not respond to the cases cited by Mr Ludovick as they were not annexed to the submissions. He emphasized that Land Application No. 304 of 2018 has not been determined to date and it was not on the applicant's negligence but his advocate. He cited the case of **Githere vs. Kimungu (1985) 1 EA 101** which points out the discretionary power of the court. He said this court must exercise its discretionary



power upon facts of individual case. He prayed for the application to be granted.

Having gone through the submissions by the parties, the issue for determination is whether the applicant adduced sufficient reasons to warrant this court to grant extension of time to file his appeal. It is settled law that grant of extension of time is the discretion of the court upon sufficient cause as was held in 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).

The main reason adduced by the applicant for the delay in filing appeal is that his advocate misled him in filing an application that was not proper, and further that the Tribunal's decision of dismissing the application on account that the advocate was not present under Regulation 13(2) and (3) of the Regulations was illegal.

It is the law that the advocate's negligence on the part of the advocate is not sufficient reason for the court to grant extension of time. This is according to the cases cited by Mr. Ludovick above, in

particular in the case of **Omari R. Ibrahim** (supra) where the Court of Appeal stressed that neither ignorance of the law nor Counsel's mistake constitutes good cause. It was further held that lack of diligence on the part of counsel is not sufficient ground for extension of time. I subscribe to this decision and the others that have been cited that failure by the advocate to file the proper application in court does not constitute a ground for extension of time. If an advocate who has proper knowledge of the law cannot file proper documents in court, then the court cannot bend its procedures to accommodate his client as in doing so it would essentially remove the use of the rules of procedure which are necessary tools to guide the courts.

The applicant also raised the point of illegality as a ground to warrant extension of time. Illegality was discussed extensively in the case of **Moto Matiko Mabanga vs. Ophir Energy PLC & Others, Civil Application No.463/01 of 2017 (CAT-DSM)** (unreported) where the Court of Appeal stated that once it is established that illegality is clearly visible on the face of record, then it can be termed as a sufficient cause to warrant extension of time. However, in the present case illegality that has been raised by the applicant is not apparent on the face of the record. In the absence of a summons or even a



letter from the respect advocate explaining his absence, then it would take a long-drawn process to ensure that indeed the applicant's advocate was in the High Court. It is also difficult for the court, without referring, perusing, or having an extract of the proceedings, to state with certainty that the applicant's advocate was only absent for that day. This in my view is not an illegality apparent on the face of the record, one needs to go deep in the proceedings to ascertain the appearances of the advocate. I am therefore not persuaded that, the alleged illegality in this application constitutes a good cause.

In view of the above, it is apparent that the applicant has failed to establish sufficient reasons to warrant the court to exercise its discretionary powers to grant extension of time to file the appeal. Subsequently, the application is hereby dismissed with costs for want of merit.

  
**V.L. MAKANI**  
**JUDGE**  
**11/10/2021**

